

# Government Class-Book

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WISCONSIN EDITION

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THE  
GOVERNMENT CLASS BOOK

A MANUAL OF INSTRUCTION IN THE PRINCIPLES  
OF CONSTITUTIONAL GOVERNMENT  
AND LAW

BY ANDREW W. YOUNG

*Author of "American Statesman," "Citizen's Manual of  
Government and Law," etc., etc.*

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THOROUGHLY REVISED, 1894

BY SALTER S. CLARK

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*Revised,*

WITH SUPPLEMENT

WISCONSIN—ITS STATE AND LOCAL GOVERNMENT  
WITH THE CONSTITUTION AS AMENDED

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## PREFACE

THE study of the principles of political science is a necessary part of a liberal education. In a country where the people govern themselves the science of government is a necessary part of a common-school education. In the United States the people elect their own law-makers and rulers, establish their own constitutions, and determine even the fundamental principles upon which men shall be governed. The danger of entrusting such power to the ignorant has not failed of illustration in our States and cities. Having universal suffrage, the people must learn to govern themselves for the sake of their own preservation and welfare.

Nor is a knowledge of the principles of legal science less necessary to every citizen. The laws of man know as little of mercy as the laws of nature, in that law never admits ignorance as an excuse for wrong. It is a proof of the essential justice of our system of jurisprudence, that so many citizens pass safely through life, totally ignorant of the law, and relying merely upon their own sense of what should be. And yet every day gives proof that ignorance is always dangerous. The study of such a work as this will not make a youth a lawyer, but it will fix in his mind a system of broad principles, which cannot fail to be useful practically.

Though these facts are self-evident, the popular

study of law and good government has been strangely neglected in this and every other country. The aim of this book, in supplying a manifest want, is to present, in such form as to be used chiefly as a text-book for schools, a broad and comprehensive view of the principles of government and law in the United States. These principles are substantially the same throughout the country, and the young may easily learn the varied rights and duties of a citizen in relation to his government and his fellow-men.

The book is divided into two parts :

Part I., *Principles of Government*, is devoted (after a few chapters upon general principles), first, to government by the State, and second, to government by the Nation. It is here that the book is believed to have its chief advantage over others of its kind. In all that we have examined, either one or the other of these subjects has been neglected. Some of our American youth have grown to manhood with so little appreciation of the political importance of the State, as to believe it nothing more than a geographical division ; others have placed the State too high, and failed to realize the power and dignity of the Nation. In reality, the National Government, on the one hand, is of far greater historic interest and permanent political importance, as really governing the future freedom or serfdom of the people. On the other hand, the State, which says whether the particular individual shall vote, what rights of property he shall have, and what shall be the punishment for his crimes, enters far more into the daily affairs of the single citizen, touches him at more points, and is therefore of greater temporary interest. Both subjects should be studied, and it is of

especial importance at this time that their relation to each other should be clearly presented to the youth of the land, for State rights and National rights must forever coexist.

Part II., *Principles of Law*, contains also two divisions, the first one presenting the main principles which govern the rights and duties of man to man in his every-day life, and his varied rights connected with personal security, liberty, and property ; and the second giving the rules by which the relations of nations to each other are regulated. Thus the volume presents a general view of the position of the citizen in all the relations he may sustain in this country : to his fellow-citizen, to his State, to his Nation, and to foreign nations.

Extensive improvements were made by Salter S. Clark, Esq., of New York, in the original form of this work. Changes and additions had been rendered necessary by historic events. A more natural and logical order was pursued, with proper subordination of topics. Each paragraph of a chapter was confined to a single specified subject. Analyses and diagrams were added, where appropriate, to be used as black-board exercises, with review questions for the use of both pupil and teacher.

The present edition has been carefully revised. Very few material changes have been made, but some corrections and additions were required to adapt the book to present needs. It is confidently hoped that this work, tested by long experience, may find as much favor in the future as it has received in the past.

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PRINCIPLES  
OF  
GOVERNMENT AND LAW

PART I  
*PRINCIPLES OF GOVERNMENT*

DIVISION I  
GENERAL PRINCIPLES

CHAPTER I

MANKIND FITTED FOR SOCIETY, GOVERNMENT, AND LAW

**1. Mankind Social**—Men are by nature fitted for society. By this we mean that they are naturally disposed to associate with each other. They could not be happy without such association. Hence we conclude that the Creator has designed men for society.

**2. Dependent on Each Other**—Man is so formed that he is dependent upon his fellow-men. He has not the natural strength of some animals. We can hardly imagine how a man could defend himself against the beasts, or even procure the necessities of life, without assistance from his fellow-beings. But by means of speech men learn from each other how to

supply their wants and improve their social condition.

**3. Each Must Support Himself**—But, although men need the assistance of each other, society is so formed that each must take care of himself. If every man were fed and clothed from a common store provided by the labor of all, many, depending upon the labor of others, would be less industrious than they now are. By the present arrangement, which obliges every man to provide for his own wants, more is produced, a greater number are cared for, and the general welfare is better promoted than if each labored for the benefit of all.

**4. Right of Property**—From this arrangement comes the right of property. If each man's earnings should go into a common stock for the use of all, there would be nothing that any one could call his own. But if each is to provide for himself, he must have a right to use and enjoy the fruits of his own labor.

**5. Common to All**—But all men in society have the same rights. Therefore we cannot rightfully supply our own wants or gratify our own desires any further than is consistent with the rights of others. But man is by nature selfish, and many would infringe the rights of others, for their own selfish ends, unless restrained. Hence we see the necessity of some fixed rules that each one may know what he may do, and what he must not do.

**6. Law**—These rules for regulating the social actions of men are called laws. *Law*, in a general sense, is a rule of action, and is applied to all kinds of action ; as, the law of gravitation, the laws of chemistry, etc. But

in a limited sense, it denotes the rules of human action prescribing what men are to do, and forbidding what they are not to do.

**7. Man a Moral Being**—We have seen that man is fitted for law, because he is designed for society, and law is necessary to govern society. By nature, also, he is fitted for government and law, because he is a *moral* being. The word *moral* has various significations. When we say, a moral man, we mean a virtuous or upright man. But in a wider sense it relates to the social actions of men, both right and wrong, as when we say, his morals are good, or his morals are bad. When it is said that man is a moral being, it is meant that he has a sense of right and wrong, or at least the power of acquiring it. He knows what is right and what is wrong, and he knows that he ought to do the right and avoid the wrong. Therefore he is fitted to understand why laws are right.

**8. Government Necessary**—Thus we have seen that men are social, reasonable, and moral beings, and that for each one of these reasons they are fitted for society and law. But law cannot exist without government. Law is a rule of action laid down by the supreme power, and if there is no supreme power there can be no law. Hence we see the necessity for government. It is not probable that people knowingly acted on these principles in first forming governments; that is, deliberately met together and agreed to have a certain government and certain laws. But it is these principles that maintain law and government now.

## CHAPTER II

## RIGHTS, LIBERTY, AND LAW, CLASSIFIED

**1. Rights**—A right is a just claim. We have a right to what we have acquired by honest labor, or other lawful means, because we are justly entitled to freely use and enjoy it. We have a right to our lives, and to our freedom; that is, to do whatever we think necessary for our own safety and happiness, provided we do not trespass upon the rights of others, because it would be unjust to deprive us of our lives or freedom.

**2. How Forfeited**—But society has its rights also, and if we infringe them it is just we should be punished by losing some of our own. We may forfeit them by some offence or crime. If, for example, a man is fined for breaking a law, he loses his right to the money he is obliged to pay. By stealing, he forfeits his liberty, and may be justly imprisoned. By committing murder, he forfeits his right to life, and may be hanged.

**3. Political Rights**—Rights are *political* or *civil*. *Political rights* are those which each citizen has with reference to sharing in the government. The word *political*, in a general sense, relates to the government. The whole body of the people united under one government is called the political body, or body politic. The right of the people to choose and establish for themselves a form of government, or constitution, and the right to elect persons to make and execute the laws, are political rights. The right of voting at elections is therefore a political right. Political rights are derived from the constitution. Under absolute monarchies,



therefore, where there is no constitution, the people have no political rights; under democracies they have more than under any other form of government.

**4. Civil Rights** are all those which are not *political*. They are the rights which govern our ordinary, everyday actions; such as, the right to go where we please, to do whatever we wish with our own property, or to control our children. They are also called *natural rights*, because given to us by nature, or by birth; and sometimes *inalienable rights*, because they cannot justly be taken away from us. They are called *civil* because they relate to the ordinary duties of a citizen.

**5. Absolute Civil Rights**—Civil rights are either *absolute* or *relative*. The *absolute civil* rights are such as we have as individuals, as members of society, in our relations to all the other members of society. They are divided into three classes: the right of *personal security*, which is the right to be secure from injury to life, body, health, or reputation; the right of *personal liberty*, which is the right to go wherever we please; and the right of *private property*, or the right to acquire property and enjoy it without disturbance. These are often called *personal rights*, or the *rights of persons*. The term *rights of person* includes only the first two; viz., the rights of *personal security* and *personal liberty*. *Religious rights*, which consist in the right to worship God in whatever way each one thinks best, and to make known and maintain his religious beliefs, are absolute rights.

**6. Relative Civil Rights** are such as we have in our relations to particular persons or classes. They are either *public* or *private*. The *public relative civil rights* are those we have in our relations to the gov-

ernment (except the right to share in it); as, the right to be protected by it, and the right the government and its officers have to our obedience. The *private relative civil rights* are such as are connected with the four relations of husband and wife, parent and child, guardian and ward, and employer and employed; as, the right of the parent to be obeyed by the child, or the right of the wife to be supported by her husband.

**7. Liberty** is the being free to exercise and enjoy our rights, and is called natural, political, civil, or religious, according to the particular class of rights referred to. Thus the exercise of rights guaranteed by the constitution or political law is called political liberty. The free enjoyment of rights secured by the civil or municipal laws is called civil liberty. And freedom of religious opinion and worship is called religious liberty. *Freedom of speech* and *freedom of the press* mean the liberty to speak and print whatever we choose, provided we do not abuse the right.

**8. Law**—It is easy to see that it makes little difference how many rights a man has, unless there is some power to insure him the liberty to enjoy them. The object of law is to secure to all men the various kinds of rights we have described. It has different names, corresponding to the kinds of rights which it protects; as, the *political law*, which secures our *political rights*, and the *civil* or *municipal law*, which secures our *civil rights*. The word *municipal* was used by the Romans to designate that which related to a *municipium*; i.e., a free town, or city. And so, often, we use the term *municipal law* as denoting the law that relates to cities or towns, but here it is used in a broader sense, and includes the body of laws

which prescribe what we may, or must not, do, and is equivalent to *civil law*.\* The constitution is the *political law*; the body of laws governing the ordinary actions of men is the *civil* or *municipal law*; and the rules which regulate the intercourse of nations constitute *international law*.

**9. The Moral Law** is that which prescribes man's duties not only to his fellow-men, but also to God. It is briefly expressed in the decalogue, or ten commandments, and is still more briefly summed up in the two great commandments, to love God with all our heart, and to love our neighbor as ourselves. It is sometimes called the *divine law*, because God is its author; and the *revealed law*, or *law of revelation*, because it is revealed to man in the Scriptures. As a rule of conduct it is also the same as the *law of nature*, the only difference between them being in their origin; the former, the *revealed law*, coming directly from God, and the latter, the *law of nature*, coming from nature—that is, our own consciousness in its perfect state.

**10. Broader than Civil Law**—Although the moral law is a perfect rule of action, to which all human laws ought to conform, yet the civil law does not, and cannot, embrace all that the moral law does. The moral law is directed not only to the outward acts, but also to the thoughts and intents of the heart. It requires us to love our Creator supremely, and our neighbor as ourselves; in other words, to do to others as we would that they should do to us. But as the omniscient God only knows when men fail in these duties, no human

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\* Care must be taken to distinguish the term, as used in this connection, from the Civil Law, a name for the old Roman law.

authority could enforce such a law. Human laws, therefore, have respect chiefly to the outward acts of men, and are designed to regulate their intercourse with each other.

## RIGHTS OF CITIZENS

- I. **POLITICAL**; these are
  - 1. Right of all to establish a government, and
  - 2. Right of each to share in it, by voting.
- II. **CIVIL**; these are
  - 1. **ABSOLUTE**; they are the right of
    - 1. Personal Security,
    - 2. Personal Liberty, and
    - 3. Private Property.
  - 2. **RELATIVE**; these are
    - 1. **Public**; they are
      - 1. Right of people to protection of government, and
      - 2. Right of government to obedience of people.
    - 2. **Private**; arising from relations of
      - 1. Husband and wife,
      - 2. Parent and child,
      - 3. Guardian and ward, and
      - 4. Employer and employed.

## CHAPTER III

## DIFFERENT FORMS OF GOVERNMENT

**1. Patriarchal Government**—Governments have existed in a great variety of forms. Most existing governments are, more or less, mixtures of the different kinds. The earliest governments of which we have any knowledge are the patriarchal. *Patriarch*, from the Greek *pater*, father, and *archos*, chief, or head, means the father and ruler of a family. This kind of government prevailed in the early ages of the world, and is the form adapted to a state of society where the people dwell together in families or tribes, and are not yet formed into states or nations. Abraham was a patriarchal ruler.

**2. Theocracy**—After their departure from Egypt, the government of the Hebrews was a *theocracy*. This word is from *theos*, God, and *kratos*, power, and signifies a government by those who are also the religious rulers, or, as it is claimed, by the immediate direction of God. The laws by which they were governed they believed were given to them on Mount Sinai by God himself, their leader and king.

**3. Most Common Forms**—But the most common forms of government are monarchy, aristocracy, and democracy. Many claim that all kinds of government may be reduced to one of these three. For example, the patriarchal government is but a kind of monarchy. The power of government is, in a general sense, called the *supreme power*, or *sovereignty*.

**4. Monarchy**—The form of government in which

the supreme power is in the hands of one person is called a *monarchy*. The word *monarch* is from two Greek words, *monos*, sole or only, and *archos*, a chief; and is a general name for a single ruler, whether he be called king, emperor, or prince. A government in which all power resides in or proceeds from one person is an *absolute* monarchy. If the power of the monarch is restrained by laws or by some other power, it is called a *limited* monarchy. The English Government is a limited monarchy. A monarchy is called *hereditary* in which the crown passes from father to son, or from the monarch to his successor, by inheritance. On the death of a sovereign, the eldest son is usually heir to the crown. A monarchy is *elective* where, on the death of the ruler, his successor is appointed by an election. Only a few such monarchies have existed.

**5. Despotism**—An absolute monarchy is sometimes called *despotism*. The words *despot* and *tyrant* at first meant simply a *single* ruler. They are now applied, for the most part, to rulers who exercise authority over their subjects with severity. In an absolute despotism, the monarch has entire control over his subjects. They have no law but the will of the ruler, who has at command a large force of armed men to keep his people in subjection. The governments of Russia and Turkey are more despotic than any others in Europe.

**6. Aristocracy** is the form of government in which the power is exercised by a privileged order of men, distinguished for their rank and wealth. The word *aristocracy* is from the Greek word *aristos*, best, and *kratos*, power, or *krateo*, to govern; and meant, originally, government by the best men. It is also used



for the nobility of a country under a monarchical government. *Nobles* are persons of rank above the common people, and bear some title of honor. The titles of the English nobility are duke, marquis, earl, viscount, and baron. These titles are hereditary, being derived from birth. In some cases they are conferred upon persons by the king.

**7. Democracy** is government by the people; the word democracy being from the Greek *demos*, the people, and *krateo*, to govern. In a government purely democratic, the great body of freemen meet in one assembly to make and execute the laws. There were some such governments in ancient Greece; but they necessarily comprised small territories, scarcely more than a single town. The freemen of a state could not all meet in a single assembly.

**8. A Republic** is that kind of democracy in which the power to enact and execute the laws is exercised by representatives, who are persons elected by the people to act for them. The people not only enact the laws and execute them through the representatives whom they elect, but also adopt their own constitution or form of government, and thus all power comes from the people, the government being properly called a *representative democracy*. A republic is sometimes also called a *commonwealth*, because its object is the common happiness of all.

**9. In this Country** the people are everywhere under two governments, the State and the National Government. The United States is a republic, and so, also, is each State. Each State has given up to the Nation those powers and duties which naturally belong to a nation in its relations with foreign powers, as the

right to make war or treaties, and also has given up the power to make laws on subjects in which all the people in the country are interested together, as commerce, the coining of money, and patents. But the State retains all the powers it has not given up, and both State and National Governments are independent of each other, each in its own sphere. The *Territories*, until they become States, are under the United States Government. It grants them, to a certain extent, through Congress, self-government, on the plan of the State governments, but it can take it away at any time.

## KINDS OF GOVERNMENT

**I. MONARCHY**; this may be,

- |   |                 |                   |
|---|-----------------|-------------------|
| { | 1. As to Power, | 1. Absolute, or   |
|   |                 | 2. Limited.       |
|   | 2. As to Title, | 1. Hereditary, or |
|   |                 | 2. Elective.      |

**II. ARISTOCRACY**;

**III. DEMOCRACY**; this may be,

- |   |                       |
|---|-----------------------|
| { | 1. Pure Democracy, or |
|   | 2. Republic.          |



## DIVISION II

### STATE GOVERNMENTS

#### SECTION I.—INTRODUCTORY

#### THEIR BASIS, THE CONSTITUTION; ELECTIONS; THREE DEPARTMENTS

### CHAPTER IV

#### CONSTITUTIONS : THEIR NATURE, OBJECT, AND ESTABLISHMENT

**1. Republic the Best Government**—Of all the different forms of government which have existed, a republican government, on the plan of that which has been established in this country, is believed to be best adapted to secure the liberties of a people, and to promote the general welfare. Under the reign of a wise and virtuous ruler, the rights of person and property may be fully enjoyed, and the people may be in a good degree prosperous. But the requisite virtue and wisdom combined have seldom been found in any one man (*i.e.*, a monarchy), or a body of men (*i.e.*, an aristocracy). And, as we in this country believe, experience has proved that the objects of civil government may be best secured by a written constitution founded upon the will or consent of the people. Each State in the Union has such a constitution, and the Nation itself has one.

**2. Constitution**—The word *constitute* is from the Latin, and signifies *to set*, to fix, to establish. *Constitution*, when used in a political sense, means the established form of government of a state. In a free government, like ours, it is properly called the *political law*, being established by the people as a body politic. (Page 16, § 8.) It is also called the *fundamental law*, because it is the *foundation* of all other laws of the state, and of all the powers of the state, legislative, executive, and judicial.

**3. Nature**—A constitution is in the nature of an agreement between a whole community, or body politic, and each of its members. This agreement or contract implies that each one binds himself to the whole, and the whole binds itself to each one, that all shall be governed by certain laws and regulations for the common good.

**4. Convention**—In forming a constitution, the people must act collectively. But their number is too large to meet in a single assembly. Therefore they choose a small number to act for them. One or more are chosen in each county, or smaller district, and are called delegates. A *delegate* is a person appointed by another with power to transact business as his representative. The assembly composed of the delegates so elected is called a *convention*, a name given to most public meetings other than legislative assemblies. The convention draws up in proper form a paper containing the fundamental laws and general form of government, under which it thinks the people wish to be governed.

**5. Adoption by People**—But what has thus been prepared by the convention is not yet a constitution.

It is only a draft of one, and cannot, in general, become a constitution without the consent of the people to be given at an election. If a majority of the persons voting at such election vote in favor of the proposed constitution, it is adopted, and becomes the constitution of the State.

**6. Amendment**—A constitution usually provides for its own amendment. Amendments are, generally, proposed and passed by the legislature, sometimes on two successive years, and then submitted to the people.

**7. Value**—One of the most valuable rights of the people under a free government is the right to have a constitution of their own choice. Indeed, it is in this right that their freedom principally consists. It is by the constitution that their rights are secured. The legislature can pass no laws that the constitution forbids, and if they should enact unjust and oppressive laws, the people, having by their constitution reserved the right to displace them, may do so by electing others in their stead.\*

**8. Other Governments**—In an absolute monarchy the people have neither the right to establish their own form of government, nor the right to elect their law-makers. The will of the monarch is the only law. In a limited monarchy they have some political rights. In Great Britain the people elect representatives to the House of Commons, which is the most important part

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\*It would seem to follow from this that the people of any State, having the right to select their own form of government, might, if they wished, choose any form; for example, a monarchy. But it must be remembered that this country is a nation, and not a collection of States, and that the United States Constitution has guaranteed to every State in the Union a republican government, or, in other words, forbidden any other form.

of the legislature; but they did not originally establish the form of government. The English have no written constitution. What is called the English constitution consists of the body of fundamental laws, principles, and customs which in the course of centuries have become securely fixed. But Parliament, the English law-making body, has the power to make any law it sees fit.

## CHAPTER V

### QUALIFICATIONS OF ELECTORS

**1. Electors**—One of the first provisions usually inserted in the constitution of a free state is that which declares who shall be allowed to take a part in the government; that is, to whom the political power shall be intrusted. The political power of the people consists chiefly in the right to vote, called the *right of suffrage*. The constitution regulates this, and does not give it to every one in the state, but only to such as are qualified to exercise it understandingly. Those who have the right of suffrage are called *electors*.\* When, therefore, we speak of the people politically, we mean those only who are qualified electors.

**2. Age**—An elector must be twenty-one years of age. Before that age young men have not the necessary knowledge and judgment to act with discretion. Some are competent at an earlier age; but a constitution can make no distinction between citizens. It has, therefore, in accordance with the general opinion, fixed the time at the age of twenty-one when men shall be

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\* These are not Presidential Electors. The word is used here in a general sense. For Presidential Electors, see page 169.

deemed capable of exercising the rights and performing the duties of freemen.

**3. Sex**—It is a general rule that no female can vote, although the question has been settled in some States in favor of female suffrage.

**4. Residence**—That a man may vote understandingly, he must have resided long enough in the State to have become acquainted with its government and laws, and to have learned the character and qualifications of the persons for whom he votes. State constitutions therefore require that electors shall have resided in the State for a specified period of time, varying, however, in the different States from three months to two years. In most of the States they must also have resided for some months in the county or district, and be residents of the town in which they offer to vote.

**5. Aliens**—Persons born in foreign countries are *aliens*, and have no right to vote, though residing here. They are presumed to have too little knowledge of our government, and to feel too little interest in public affairs, on their first coming hither, to be duly qualified for the exercise of political power. Laws, however, have been enacted for naturalizing aliens after they shall have resided here long enough to become acquainted with and attached to our government. By naturalization they become citizens, entitled to all the privileges of native or natural-born citizens except election to the office of President or Vice-President. (See page 148.)

**6. Criminals**—It is provided also in State constitutions that electors convicted of infamous crimes are disfranchised. *Franchise* is a right or privilege. The right of voting is called the *elective franchise*; and an elector when deprived of this privilege is *dis-*

*franchised*. Men guilty of high crimes are deemed unfit to be intrusted with so important a duty as that of electing the persons who are to make and execute the laws of the State. It is provided, however, that if such persons are pardoned before the expiration of the term for which they were sentenced to be imprisoned, their forfeited rights are restored.

**7. Idiots** and *lunatics* have no right to vote, for the reason that they cannot use it understandingly.

**8. Property**—In general it is not now necessary for an elector to own property. By the earliest constitutions of many of the old States, electors were required to own property, or to have paid rents or taxes, to a certain amount. In the constitutions of the newer States, and the amended constitutions of the old States, property has not been made a qualification of an elector. In many States, however, paupers have no vote.

**9. Color**—There is now no distinction of color in the right to vote, and the negro has the same privilege as the white man in all the States. Up to the adoption of the fifteenth amendment to the Constitution of the United States, in 1870, colored people, whether slave or free, could not vote in the Southern States, and in only three or four of the Northern States.

Recent laws have greatly restricted the immigration of the Chinese. They have no political rights in this country.

Thus it will be seen that while all the people in a State have civil rights, less than half have political rights.



## CHAPTER VI

## ELECTIONS

**1. When Held**—For the convenient exercise of political power, as well as for the purposes of government generally, the territory of a State is divided into districts of small extent. A State is divided into counties, and these are divided into towns or townships. The people of every county and every town have power to manage their local concerns. The electors of the State meet every year in their respective towns for the election of officers. Governors in most of the States are elected every two or four years, but many officers elected by the people are chosen every year. All the electors of the State may vote for State officers, but only residents of the respective towns or counties can vote for the town and county officers. In most States the general State election is held in October or November.

**2. Inspectors of Election**—Elections are conducted by persons designated by law, or chosen by the electors of the town, for that purpose. It is their duty to preserve order, and to see that the business is properly done. They are usually called *judges of election* or *inspectors of election*. Persons also (usually two) serve as clerks. Each clerk keeps a list of the names of the persons voting, which is called a *poll-list*. *Poll*, which is said to be a Saxon word, signifies *head*, and has come to mean person. By a further change it has been made to signify an election or the place where the voting is done.

**3. Voting**—The polls, *i.e.*, the voting places, are generally open one day, from sunrise to sunset. The inspectors receive from each voter a ballot, which is a piece of paper containing the names of the persons voted for, and the title of the office to which each of them is to be elected. The voting in most of the States is by ballot, but in one or two it is *viva voce*; that is, by the elector speaking the name of the person for whom he votes.

**4. Challenging**—If no objection is made to an elector's voting, the ballot is put into the box and the clerks enter his name on the poll-list. If the inspectors suspect that a person offering to vote is not a qualified elector, they may question him upon his oath in respect to his age, the term of his residence in the State and county, and citizenship. Any bystander also may question his right to vote. This is called *challenging*. A person thus challenged is not allowed to vote until the challenge is withdrawn, or his qualifications are either proved by the testimony of other persons or sworn to by himself.

**5. Registration**—In a few States the voters are registered, especially in the large cities. A list is made some days before the election, of the names of all who present themselves and, upon examination, are shown to be qualified electors; and those only whose names have been registered are allowed to vote on election-day. Thus many interruptions to voting by the examination of voters at the polls, and much illegal voting, are prevented.

**6. Canvassing**—After the polls are closed, the box is opened and the ballots are counted. This is called *canvassing* the votes. If the number of ballots agrees



with the number of names on the poll-lists, it is presumed no mistake has been made either in voting or in keeping the lists. If there are more ballots than names, in some States the election will be void, in others a number of ballots equivalent to the excess will be drawn out and destroyed. If the election is one for the choosing of town officers, it is there determined who are elected, and their election is publicly declared. The election of county and State officers cannot be determined by the town canvassers. A statement of the votes given in each town for the persons voted for is sent to the county canvassers, who, from the returns of votes from all the towns, determine and declare the election of the officers chosen for the county. To determine the election of State officers, and of such others as are elected for districts comprising more than one county, a statement of the votes given for the several candidates is sent by the several boards of county canvassers to the State canvassers, who, from the returns of votes from the several counties, determine the election of the State officers.

**7. Number Necessary**—In most of the States persons are elected by a plurality of votes. An election by *plurality* is when the person elected has received a higher number of votes than any other, though such number be less than half of all the votes given. Suppose, for example, three candidates receive 1,000 votes: one receives 450; another, 300; the third, 250 votes. The first, having the highest number, though not a majority, is elected. In most of the States of New England a *majority*—that is, more than one half of all the votes given—is necessary to the election of many of the higher officers. The least number of votes out

of 1,000, by which a person can be elected by this rule, is 501.

**8. Objections**—Either of these modes is open to objection. When a simple plurality effects an election, 1,000 votes may be so divided upon three candidates as to elect one by 334 votes; or of four candidates, one may be elected by 251 votes, and against the wishes of nearly three fourths of the electors. The objection to the other mode is that if no person receives a majority of all the votes, another election must be held. Numerous trials have, in some instances, been necessary to effect a choice; and the people of a district have remained for a time without a representative in the State or national legislature.

## CHAPTER VII

### DIVISION OF POWERS OF GOVERNMENT

**1. Three Departments**—Government is divided into three distinct divisions, or, in other words, sovereign power may be exercised in three directions: in making laws, in enforcing them, and in judging whether particular cases come under certain laws. In all free countries these powers are exercised by three separate departments, called the *legislative*, *executive*, and *judicial* departments. In a monarchy, though they may exist, the other two are more or less under the control of the executive department, the monarch. In this country the three departments exist in every State and are kept distinct from each other.

**2. Legislative**—The legislative department is that by which the laws of the State are made, and is called

the *legislature*. Its object is to make such laws as are not embodied in the constitution. The constitution establishes not only the form and the departments of government, but also certain broad principles of law, which the legislature cannot violate; but it leaves to the legislature the making of the particular laws to carry out those principles in detail, and there are many subjects on which the legislature is unrestrained. It would be impossible for a State to adopt, as a constitution, a system of laws that would not need change and addition.

**3. Its Divisions**—The legislature is composed of two bodies, or houses, as they are called, the members of each being elected by the people. Both must agree to a measure before it becomes a law. In limited monarchies where one branch of the legislature is elective, the other is an aristocratic body, composed of men of wealth and dignity, as the British House of Lords.

**4. Executive**—The executive department is intrusted with the power of executing, or carrying into effect, the laws of the State. Its principal officer is a governor, who is elected by the people. He is assisted by a number of other officers, some of whom are elected by the people; others are appointed in such manner as the constitution or laws prescribe.

**5. Judicial**—The judicial department is that by which justice is administered to the citizens. Its duty is to decide the meaning of laws, and whether particular cases fall within them. It embraces the several courts of the State. All judges and justices of the peace are judicial officers.

**6. Separation**—Experience has shown the propriety of dividing the civil power into these three depart-

ments, and of confining the officers of each department to the powers and duties belonging to the same. Those who make the laws should not exercise the power of executing them; nor should they who either make or execute the laws sit in judgment over those who are brought before them for trial. It would give too much power to one, and would endanger the liberty of the people. Yet in many instances this principle is violated to a degree. In many States the governor must approve a measure before it can become a law, and thus he has legislative power. In some he appoints the judges, and so has judicial power.

## DEPARTMENTS OF GOVERNMENT

### I. LEGISLATIVE—LAW-MAKING: consists of

- { 1. Senate,
- 2. House of Representatives, and
- { 3. Governor (in many States).

### II. EXECUTIVE—LAW-EXECUTING: represented by

- { 1. Governor, and
- { 2. All other executive officers.

### III. JUDICIAL—LAW-INTERPRETING AND AP- PLYING: consists of

All the judges.

## SECTION II—LEGISLATIVE DEPARTMENT

## CHAPTER VIII

## LEGISLATURE : HOW CONSTITUTED

**1. Two Houses**—The legislature of every State in the Union is composed of two houses—a *senate* and a *house of representatives*, sometimes called the *upper* and *lower house*.\* In most of the States the two houses together are called the *general assembly*.

*a. Senate*

**2. Character**—The senate, as well as the other house, is a representative body, its members being elected by the people to represent them. It is a much smaller body than the lower house, and consists, generally, of from twenty-five to fifty members in the different States. It was designed to be, and is, a more

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\* Though both are representative bodies, only the lower house is called the "House of Representatives." The reason for this may be: Under the governments of the Colonies, while yet subject to Great Britain, there was but one representative assembly. The other branch of the legislature was called a *council*, consisting of a small number of men who were appointed by the King. After the Colonies became free and independent States, the *senate* was substituted for the old *council*, and the other house kept its old name.

The lower house in the States of New York, Wisconsin, Nevada, and California, is called the assembly; in Maryland, Virginia, and West Virginia, the house of delegates; in North Carolina, the house of commons; and in New Jersey, the general assembly.

select body, composed of men chosen with reference to their superior ability or their greater experience in public affairs.

**3. Terms**—Senators are chosen for terms of four years in about half the States; in the rest for terms of one, two, or three years. In most of the States in which senators are elected for longer terms than one year, they are not all elected at the same time. They are divided into classes, and those of one class go out of office one year, and those of another class another year; so that only a part of the senators are elected every year, or every two, or three, or four years.

**4. Apportionment**—This means the division of the State into portions; from each portion its inhabitants elect one senator. Senators are differently apportioned in different States. In some States they are apportioned among the several counties, so that the number to be elected in each county shall be in proportion to the number of its inhabitants. In others they are elected by districts, equal in number to the number of senators to be chosen in the State, and a senator is elected in each district. The districts are to contain, as nearly as may be, an equal number of inhabitants, and sometimes they comprise several counties.

### *b. House of Representatives*

**5. Character**—This house also is elective, and is a larger body than the senate. It consists, generally, of from one hundred to two hundred members in the different States.

**6. Terms**—In most of the States members are elected for two years' terms; in the others, chiefly the Eastern States, annually.



**7. Apportionment**—Since the number of representatives is much larger than that of senators, the districts from which they are elected will, in the same State, be much smaller. Representatives are apportioned among the counties in proportion to the population in each. In some States they are elected in districts of equal population, counties being sometimes divided in the formation of districts. In the New England States representatives are apportioned among the towns.

*c. Provisions affecting both*

**8. Census**—The different modes of apportioning members of the legislature have in view the same object—equal representation; that is, giving a member to the same number of inhabitants throughout the State. But in some counties the population increases more rapidly than in others. The representation then becomes unequal, being no longer in proportion to population. In order to keep the representation throughout the State as nearly equal as possible, the constitution requires that, at stated times, the people of the State shall be numbered, and a new apportionment of senators and representatives be made among the several counties according to the number of inhabitants in each county; or if the State is one in which members of the legislature are chosen in districts, a new division of the State is made into districts. This enumeration or numbering of the people is called the *census*, and is taken in some States every ten years, in others oftener. But many States depend on the census which the United States takes every ten years.

**9. Qualifications**—The constitution also prescribes

the qualifications of senators and representatives. If, as qualifications for an elector, full age, citizenship, and a considerable term of residence in the State and county are properly required, as we have seen (page 26), they must be at least equally necessary for those who make the laws. In no State, therefore, are any but qualified electors eligible to the office of senator or representative. In some States greater age and longer residence are required ; and in some the age and term of residence have been still further increased in the case of senators. The property qualification formerly necessary for members of the legislature, as well as for voters, has been almost entirely abolished.

**10. Vacancy**—If a member of the legislature dies or resigns his office before the expiration of the term for which he was chosen, the vacancy is filled by the election of another person at the next general election, or at a special election called for that purpose, or in such other manner as the constitution may provide. But a person chosen to fill a vacancy holds the office only for the remainder of the term of him whose place he was chosen to supply.

**11. Salary**—Each member has a salary, fixed by law.

## CHAPTER IX

### MEETINGS AND ORGANIZATION

**1. How Often**—The legislature meets as often as the constitution requires : in about half of the States annually, in the others biennially, or once in two years. A legislative session includes the daily meetings of a legislature from the time of its first assem-



bling to the day of final adjournment. Thus we say the session commenced in January and ended in March. The word *session* has reference also to a single sitting, from the hour at which the members assemble on any day to the time of adjournment on the same day. Thus we say the legislature holds a daily session of four hours; or, it holds two sessions a day, as the case may be.

**2. Place**—Meetings of the legislature are held at a certain place permanently fixed by law of the State, at which the principal State officers keep their offices. Hence it is called the *seat of government*, or, perhaps more frequently, the *capital* of the State. *Capital* is from the Latin *caput*, the head, and has come to mean chief, or the highest. In this country the word *capital*, applied to a city, now generally indicates the seat of government.

**3. Organization**—When the two houses have assembled in their respective chambers, and the oath of office has been administered, each house proceeds to *organize*. This consists in appointing proper officers, and in determining the right of members to their seats. Each house is the sole judge of who has been elected to it. The first officer elected is the presiding officer, or chairman, who is usually called *speaker*. The lieutenant-governor, in States in which there is one, presides in the senate, and is called *president of the senate*. In the absence of the presiding officer, a temporary speaker or president is chosen, who is called speaker, or president, *pro tempore*, commonly abbreviated *pro tem.*, which is a Latin phrase, meaning *for the time*.

**4. Presiding Officer's Duty**—The duty of the person presiding is to keep order and to see that the busi-

ness of the house is conducted according to certain established rules. When a vote is to be taken he puts the question, and when taken he declares the question to be carried or lost. This part of the speaker's business is similar to that of the chairman of an ordinary public meeting.

**5. Minor Officers**—The other officers chosen by each house are: a *clerk*, to keep a record or journal of its proceedings, to take charge of papers, etc.; a *sergeant-at-arms*, to arrest members and other persons guilty of disorderly conduct, to compel the attendance of absent members, and to do other business of a like nature; also one or more *door-keepers*. The officers mentioned in this section are not chosen from the members of the house.

**6. Quorum**—The constitution determines what portion of the members shall constitute a quorum to do business, *i.e.*, how many must be present. *Quorum* is the Latin of the English words *of whom*, and has strangely come to signify the *number* or *portion* of any body of men who have power to act. In most States a majority will constitute a quorum; in some a greater number is required, two-thirds or three-fifths.

**7. Proceedings Open**—Constitutions generally require also that the proceedings of legislative bodies shall be open to public inspection. The doors may be closed against spectators only when the public good shall require secrecy. And that the people may be fully informed of what is done, each house is required to keep and publish a journal of its proceedings.

**8. Interruptions**—Provision is also made, either by the constitution or by law, against injury or interruption to the business of the legislature. Members may

not, by any prosecution at law, except for crimes and misdemeanors, be hindered during their attendance at the sessions of the legislature, nor in going to or returning from the same. Each house may compel the attendance of absent members. It may for good cause expel a member and punish not only its members and officers, but other persons, for disorderly conduct or for obstructing its proceedings.

## CHAPTER X

### MANNER OF ENACTING LAWS

**1. Power**—The legislature of every State has power to enact any law, on any subject, not forbidden by the Constitution of the United States or its own constitution, and not at variance with any law of Congress. In this particular the extent of its power is broader than that of Congress, for the latter can legislate only on the particular subjects named in the United States Constitution. The subjects which the United States Constitution forbids to the State legislatures will be found in a later chapter (page 163). The State constitutions also contain prohibitions meant to restrain the legislature from making oppressive laws, or such as would endanger the people's absolute rights. (See page 15, § 5.) If any laws are passed contrary to these constitutional provisions, they will be void and of no effect.

**2. Rules**—Constitutions prescribe no method of passing laws. They leave it entirely to the legislature itself. But it would be impossible for such a body to act without some order, and so each legislature estab-

lishes certain rules, which are seldom departed from. But, though ordinarily followed, these rules may be departed from, and the law will be just as valid, provided a quorum is present and a sufficient number vote for it.

**3. Governor's Message**—When the two houses are duly organized and ready for business, the governor sends to both houses a written communication called *a message*, in which, as the constitution requires, he gives to the legislature information of the condition of the affairs of the State, and recommends such measures as he judges necessary and expedient. The message is read to each house by its clerk.

**4. Other Measures**—But the measures to which the governor calls the attention of the legislature are but a small portion of those which are considered and acted upon. Many are introduced by individual members. Others are brought into notice by the petitions of the people in different parts of the State. *Petition* generally signifies a request or prayer. As here used, it means a written request to the legislature for some favor—generally for a law granting some benefit or relief to the petitioners. Petitions are sent to members, usually to those who represent the counties or districts in which the petitioners live, and are by these members presented to the house. Laws may be introduced in either house.

**5. Committees**—The subjects to be acted on by a legislature are very numerous, and if the whole house carefully examined each measure and listened to all the reasons why the measure was necessary it could not finish half its labor. So committees are appointed at the beginning of the session, consisting of from

three to seven members, each committee having charge of some particular subject: such as, the committee on finance, or the money matters of the State, called the ways and means committee; the committee on agriculture; on manufactures; on railroads; on education; and a great many other subjects. As soon as a measure is introduced into the house it is referred to its appropriate committee, to examine into its necessity and report to the house the result of the examination. These committees are so numerous that every member is on at least one or two, and are called *standing committees*, because they continue through the session. When a question arises having no relation to any particular subject on which there is a standing committee, it is usually referred to a *special* or *select* committee appointed to consider this particular matter.

**6. Committee Meetings**—Committees meet in private rooms during hours when the house is not in session; and any person wishing to be heard in favor of or against a proposed measure may appear before the committee having it in charge. Having duly considered the subject, the committee reports to the house the information it has obtained, with the opinion whether the measure ought or ought not to become a law. Measures reported against by committees seldom receive any further notice from the house.

**7. Bills**—If a committee reports favorably upon a subject, it usually brings in a bill with its report and recommends its passage. A *bill* is the form or draft of a law. Sometimes it is prepared in correct form before it is introduced into the house or referred to the committee. In other cases, as, for instance, when



the subject is brought before the house by petition, the committee prepares it.

**8. Three Readings**—A bill before it is passed is read three times, on three separate days. In some legislatures the rules allow the first and second readings to be on the same day. The first and second readings consist often of merely reading the title or the enacting clause. Then amendments to it may be introduced, and adopted or rejected. Finally, the third reading is had, this time the clerk really reading the bill, except where it is a long one, and the final vote is taken. Debate on the bill is not usually had until after the second reading. There are a great many rules covering every point which may arise, such as the order of business, and when debate shall be allowed; and these rules are usually followed: but sometimes, in cases of exigency, all the rules are suspended and a bill is introduced and passed immediately, without being referred to a committee or even being read.

**9. Passage**—When the final vote is to be taken, the speaker puts the question: "Shall the bill pass?" If a majority of the members present vote in the affirmative (the speaker also voting), the bill is passed; if a majority vote in the negative, or if the ayes and noes are equal, the bill is lost. In a senate where a lieutenant-governor presides, not being properly a member, he does not vote, except when the ayes and noes are equal, in which case there is said to be a *tie*; and he determines the question by his vote, which is called the *casting* vote. In some States, on the final passage of a bill, a bare majority of the members present is not sufficient to pass it, in case any members are absent. The constitutions of those States require the votes

of a majority of *all the members elected* to each house.

**10. Other House**—When a bill has passed one house it is sent to the other, where it passes through the same forms of action ; that is, it is referred to a committee, reported by the committee to the house, and is read three times before a vote is taken on its passage. This vote having been taken, the bill is returned to the house from which it was received. If it has been amended, the amendments must be agreed to by the first house, or the second must recede from its amendments, or the amendments must be so modified as to secure the approval of both houses, before the bill can become a law.

**11. Veto**—But in many of the States a bill, when passed by both houses, is not yet a law. As the two houses may concur in adopting an unwise measure, an additional safeguard is provided against the enactment of bad laws, by requiring all bills to be sent to the governor for examination and approval. If he approves a bill, he signs it, and it is law ; if he does not sign it, it is not a law. In refusing to sign a bill, he is said to *negative* or *veto* the bill. *Veto*, Latin, means *I forbid*.

**12. No Absolute Veto**—But no governor has full power to prevent the passage of a law. If he does not approve a bill, he must return it to the house in which it originated, stating his objections to it ; and if it shall be again passed by both houses, it will be a law without the governor's assent. But in such cases greater majorities are generally required to pass a law. In some States a majority of two-thirds of the members present is necessary ; in others, a majority of *all the members elected*. In some States if the governor does not return



a bill within a certain number of days, it becomes a law without his signature and without being considered a second time.

**13. Taking Effect**—Laws become operative the minute the last act is done; in those States where the governor must approve them, the minute he signs his name, unless the law itself provides otherwise. But this would often create great hardship, for one might violate a law before he had time to hear of it. Therefore constitutions often provide that a law shall not take effect for some days after its passage, or the law itself may so provide.

## SECTION III.—EXECUTIVE DEPARTMENT

### CHAPTER XI

#### STATE OFFICERS

**1. Classification**—The executive officers of a State may be divided into two classes: those whose duties relate to the whole State, as the governor or the attorney-general, and those whose duties relate only to some particular portion of it, as the sheriffs. The first class are elected by all the people of the State, and have their offices at the capital; the latter are elected by the people of the particular district (county, town, or city), and have their offices there. In this chapter we will treat only of the first class.

**2. Governor**—The chief executive officer of a State is the governor. In a monarchy the chief executive

officer is the monarch himself. But there is this difference: in a monarchy the monarch is the source of power, and all inferior officers are his agents and responsible to him alone; in a republic the people are the source of power, and inferior officers are their agents, responsible to them with the governor, and not to him. He is called the chief officer because he has the highest duties to perform.

**3. Term**—The governor is elected by the people, for different terms in the different States. In most States the term is either two or four years; in some New England States it is one year.

**4. Qualifications**—The qualifications for the office of governor are also different in the different States. To be eligible, a person must have been for a certain number of years a citizen of the United States, and for a term of years preceding his election a resident of the State. He must also be above a certain age, which in a majority of the States is thirty years; and in some States he must own a certain amount of property.

**5. Executive Powers**—The governor's executive powers and duties are numerous and important. He represents the State in its dealings with other States. He is commander-in-chief of the military force of the State, and can call it out in times of insurrection. He is to take care that the laws are faithfully executed, and may require information at any time from the different executive officers concerning the condition of affairs in their respective departments. He communicates by message to the legislature, at every session, information of the condition of the State, and recommends such measures as he judges necessary and expedient. He may convene the legislature on extraordi-

nary occasions ; that is, when some important matter arises requiring immediate attention.

**6. Legislative Powers**—In most States the governor has the veto power. (See p. 45, § 11.)

**7. Judicial Powers**—A governor has power to grant reprieves and pardons, except in cases of impeachment, and, in some States, of treason. To *reprieve* is to postpone or delay for a time the execution of the sentence of death upon a criminal. To *pardon* is to annul the sentence by forgiving the offence and releasing the offender. A governor may also *commute* a sentence, which is to exchange one penalty or punishment for another of less severity ; as, when a person sentenced to suffer death is ordered to be imprisoned.

**8. Appointments**—The governor also appoints some executive or judicial officers. The power of appointment varies greatly in the different States : in some he appoints all the higher executive and judicial officers, such as the secretary of state, the attorney-general, or the judges of the courts ; in others, those are all elected, and he only appoints some lower officers, such as notaries. He almost never has the power to appoint legislative officers. He also fills vacancies in executive and judicial offices, until the next election, when they occur through death or resignation. He has in some cases the power of removal for misconduct.

These are only the principal powers and duties devolved on the governor. He has many others.

**9. Councils**—In a few States an *executive council* is elected by the people, whose duty it is to advise the governor. In many cases, as, for instance, appointments, he must obtain their consent.

**10. Lieutenant-Governor**—In many of the States

this office does not exist.\* He has few duties. In most States where the office exists, he presides in the senate, in which he has only a casting vote. The chief object of this office seems to be to provide a suitable person to fill the vacancy in the office of governor in case the latter should die, resign, be removed, or otherwise become incompetent.

**11. Assistant Officers**—Among the executive officers who assist in the administration of the government, there are in every State some or all of the following: a secretary of state, a comptroller or auditor, a treasurer, and an attorney-general. In some States they are appointed by the governor, in others by the legislature, and in others they are elected by the people.

**12. The Secretary of State** has charge of the State papers and records. He keeps a record of the official acts and proceedings of the legislature and of the executive departments, and has the care of the books, records, deeds of the State, parchments, the laws enacted by the legislature, and all other papers and documents required by law to be kept in his office.

**13. The State Comptroller**, in some States called *auditor*, manages the financial concerns of the State; that is, the business relating to the money, debts, land, and other property of the State. He examines and adjusts accounts and claims against the State, and superintends the collection of moneys due the State. When money is to be paid out he draws a warrant on the State treasurer.

**14. The State Treasurer** has charge of all the moneys of the State, and pays out the same as

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\* Viz.: Alabama, Arkansas, Delaware, Georgia, Maine, Maryland, New Hampshire, New Jersey, Oregon, Tennessee, and West Virginia.

directed by law, and keeps an accurate account of such moneys.

**15. Official Bonds**—Auditors, treasurers, and other officers intrusted with the care and management of money or other property are generally required, before they enter on the duties of their offices, to give bonds, in sums of certain amount specified in the law, with sufficient sureties, for the faithful performance of their duties. The sureties are persons who sign the bond with the officer, and bind themselves to pay the State all damages arising from neglect of duty on the part of the officer, not exceeding the sum mentioned in the bond.

**16. The Attorney-General** is a lawyer who acts for the State in lawsuits in which the State is a party. He prosecutes persons indebted to the State, and causes to be brought to trial persons charged with certain crimes. He also gives his opinion on questions of law submitted to him by the governor, the legislature, and the executive officers.

**17. Other Officers**—There are also in some States the following officers: a *surveyor-general*, who superintends the surveying of the lands belonging to the State, and who keeps in his office maps describing the bounds of the counties and townships; a *superintendent of schools* or *superintendent of public instruction*, who attends to many matters connected with the public schools of the State; a *State printer*, who prints the laws and all State papers; a *State librarian*, who has charge of the State library; and others.



## CHAPTER XII

## COUNTY OFFICERS

**1. Reasons for Division**—A State is divided into counties,\* and each county is divided into towns, townships, or districts.† There are several reasons for this division: for convenience in the legislative, executive, and judicial departments. Some laws may be necessary in some parts of the State that are not needed in others, and which the people of those parts can better make for themselves; and the boundaries must be clearly fixed that it may be known who comes under the regulations or who can make them. So, too, there are many executive officers, such as sheriffs and collectors of taxes, but each must have his jurisdiction confined to particular limits or there would be great confusion. There are many lower courts, too, and the jurisdiction of each must be clearly defined.

**2. Origin of County**—Counties in England were formerly districts governed by *counts* or earls, from

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\* Counties in the same State are about the same size, and have about the same population; but the counties of one State as compared with those of another vary very greatly as to number, size, and population. In 1892, Massachusetts had 14 counties, Texas 261, and Oregon 31. In Massachusetts there were about 500 square miles in a county, in Texas 1,005, and in Oregon 3,050; in Massachusetts the population in a county was about 160,000, in Texas 8,500, and in Oregon 10,000. Counties exist in every State except South Carolina and Louisiana, where districts and parishes prevail.

† Towns or townships also vary in size, but perhaps a fair average would be from five to ten miles square. Towns do not exist, generally, in the Southern States or the extreme Western States. There the county is divided into districts for special purposes.

which comes the name of *county*. A county was also called *shire*, and an officer was appointed by the count or earl to perform certain acts in the principal town in the county, which was called *shire town*, and the officer was called *shire-reeve*, or *sheriff*. He was a more important officer than the sheriff of a county in this country now is. The court-house and other county buildings are situated at the principal place in the county, and it is called the *county-seat*, or *capital*.

**3. Political Importance**—In the Southern and extreme Western States the county is the most important political division, and exercises most of the local governmental powers, such as many important powers with regard to the establishment of common schools, regulation of roads, laying and collection of taxes, care of the poor, etc. In New England the town exercises most of these powers, and the county has very little importance. In the remainder—that is, in the Middle and Western States (except those far west)—these powers are divided between the county and town.

**4. Corporations**—Counties, towns, cities, and villages are *municipal corporations*. Let us see what a corporation is. Persons, in a legal sense, are divided into two classes, *natural persons* and *corporations*. Natural Persons are human beings, as God made them; Corporations are artificial persons, or bodies, created by law. In other words, a *corporation* (also called a *body politic*, or *body corporate*) is an association of persons authorized by law to transact business under a common name and as a single person. The laws of the State give such authority to the inhabitants of counties and towns. The people of a town or county have power,



to some extent, to buy, hold, and sell property, and sue and be sued, as single individuals. Therefore they are corporations. So, also, is the State itself. But there are two kinds of corporations: *public*, or *municipal*, and *private*. Public, or municipal corporations are those organized for purposes of government, such as counties, towns, cities, and villages; private corporations are all others, such as banks, railroad companies, and churches.

**5. County Commissioners**—We have seen that a county is a corporation, and that corporations have power to act as single persons. But a corporation must act by means of natural persons, *i.e.*, by its agents. The chief agent of a county—that is, the body which exercises the most important corporate powers—is a board of *county commissioners* (usually three). In a few States these powers are exercised by and in the name of the *board of supervisors*, which is composed of the supervisors of the several towns in the county, of whom there is one supervisor in each town. These boards have charge of the county property, and may make orders and contracts in relation to the building or repairing of the court-house, jail, and other county buildings. In those States in which the county exercises more political power than the town, these boards have many powers with regard to schools, roads, taxes, etc. The following are the more important county offices which exist in every State:

**6. County Treasurer**—There is in each county a *treasurer* to receive and pay out the moneys of the county, as required. There is also, in some States, a county *auditor* to examine and adjust the accounts and debts of the county. The business of county treasurers

and auditors in their respective counties is of the same nature as that of State auditors and treasurers, and they are required to give bonds in the same way. In States in which there is no county auditor, the duties of auditor are performed by the treasurer.

**7. Recorder**—There is also in each county a *register* or *recorder*, who records in books provided for that purpose all deeds, mortgages, and other instruments of writing required by law to be recorded. In New York and in some other States the business of a register or recorder is done by a county clerk, who is also clerk of the several courts held in the county. In some States deeds, mortgages, and other written instruments are recorded by the town clerks of the several towns.

**8. Sheriff**—Another county officer is a *sheriff*, whose duty it is to execute all warrants, writs, and other processes directed to him by the courts; to apprehend persons charged with crime; and to take charge of the jail and of the prisoners therein. It is his duty, also, to preserve the public peace; and he may cause all persons who break the public peace within his knowledge or view to give bonds, with sureties, for keeping the peace and for appearing at the next court to be held in the county, and to commit them to jail if they refuse to give such bonds. A sheriff is assisted by deputies.

**9. Coroner**—There are in each county one or more *coroners*, whose principal duty is to inquire into the cause of the death of persons who have died by violence, or suddenly, and by means unknown. Notice of the death of a person having so died is given to a coroner, who institutes an examination. A jury is summoned to attend the examination; witnesses are examined; and the jury give their opinion in writing as

to the cause and manner of the death. Such inquiry is called a *coroner's inquest*.

**10. The District Attorney** is a lawyer who attends all courts in the county in which persons are tried for crimes, and conducts the prosecution. As all crimes and breaches of the peace are considered as committed against the State, and prosecuted in its name, this attorney is sometimes called *State's attorney*, or *prosecuting attorney*.

**11. Other Officers**—There are often other officers in each county ; such as, *assessors*, who assess the value of each one's property so that it may be known what tax he shall pay ; *collectors of taxes* ; a *county surveyor* ; a *superintendent of schools*.

**12. Elected**—County officers are generally elected by the people of the county, for terms of from one to four years. Some of them are, in some of the States, appointed by some authority prescribed by the constitution or laws of the State.

**13. Whom They Represent**—While the different county officers are alike in this respect, that their jurisdiction extends only to their particular county, and also in this fact, that in their official acts they act as representatives or agents of the people ; they differ from each other in this, that while some represent the people of the whole State (and in that sense may be called State officers), others represent only the people of their own county. Thus, when a sheriff arrests a man for crime, it is the State which arrests him by the hand of its agent in that county ; when the district attorney prosecutes him, it is the State which is trying him for the crime against itself. (See page 83, footnote.) On the other hand the county commissioners

commonly act only as agents of their county. Some officers may represent the State in some of their duties, and the county in others.

## CHAPTER XIII

### TOWN OFFICERS

**1. Towns**—In all the States except those far west and most of the Southern States, each county is subdivided. These subdivisions are called *towns* at the East, and *townships* at the West and South. At the West and South a village or city is often called a town. But in this book we shall use the word *town* as meaning an organized subdivision of a county. In those States where towns do not exist, the county exercises all the local governmental powers and has all the necessary officers. It must be remembered, then, that this chapter does not apply to all the States.

**2. Chief Officer**—Since a town is a corporation, it must, like a county, have some one to represent it and act for it. The principal officer, or board, whose duty this is, has different names in different States. In the New England towns there are what are called *selectmen*, three or more in each town. In a few States there are *trustees of townships*. In a few other States there is in each town one such officer, called *superior*. The powers and duties of these officers are the most numerous and important in New England, where the town is the most important division of the State. They have duties with regard to taking charge of the town property, laying out and repairing roads, collecting taxes, providing for the poor, etc. In those States

where the county is the more important division, the town officers have fewer of these duties, and the county officers have more.

**3. Treasurer**—There is often a *town treasurer*, with duties, in his own town, analogous to those of a county treasurer.

**4. Town Clerk**—A *town clerk* in each town keeps the records, books, and papers of the town. He records in a book the proceedings of town meetings, the names of the persons elected, and such other papers as are required by law to be recorded.

**5. Constables**—There are several *constables* in each town. Their principal duties are to serve all writs and processes issued by justices of the peace. The business of a constable in executing the orders of a justice of the peace is similar to that of a sheriff in relation to the county courts.

**6. Highways**—For the repairing of *highways and bridges*, a town is divided by the proper officers into as many road districts as may be judged convenient; and a person residing in each district is chosen, called *overseer*, or *supervisor*, or *surveyor of highways*, whose duty it is to see that the roads and bridges are repaired and kept in order in his district. In some cases a tax is laid for the purpose, and ordinary laborers do the work. In others, each one taxed may work on the road himself a certain number of days, or he may pay the tax, according as he wishes.

**7. Overseers of the Poor** provide for the support of paupers belonging to the town, who have no near relatives able to support them. In some States there is in each county a poor-house, to which the paupers of the several towns are sent to be provided for; the expense



to be charged to the towns to which such poor persons belonged.

**8. Other Officers**—There are often in every town other inferior officers: *assessors* and *collectors of taxes* (see Chapter XV.); certain *school officers*; *fence viewers*, who settle disputes as to division fences; *pound keepers*, who take charge of stray animals; *sealers*, who keep correct copies of the standard of weights and measures; and others.

**9. Elected**—Most town officers are elected by the electors of their respective towns at the annual town meetings, for terms of one year.

**10. Town Meetings**—These are meetings of the electors held once a year in every town for the election of town officers and for certain other business. They exist only in New England and a few other States which have been under the influence of New England. At them the people not only elect officers, but take some share in the government. For instance, they have power to vote what money shall be raised for school purposes, for highways, and other purposes; what salaries shall be paid different officers; what proceedings shall be taken at law; and other powers. This, as far as it goes, is pure democracy. With a county it is different. The people of a county never meet together except to elect officers, and take no part, directly, in the direction of affairs.

## CHAPTER XIV

## CITIES AND VILLAGES

**1. Reasons for Incorporation**—A city, or a village,\* is a particular portion of a town which has become so thickly populated that a different kind of government is needed from that of the rest of the town. For instance, where there are many people who use the streets, sidewalks will be necessary; and where the houses are near to each other, as in the ordinary village, fire-engines and fire-companies will be necessary to prevent the whole place from being destroyed; and if the population is still more dense, as in a city, many other regulations are necessary—such as, with regard to police, water supply, cleaning the streets, sewers, etc. But towns do not have the power to regulate these things. It is thought best that the people living in those thickly populated portions should do it themselves. The legislature of the State gives them these powers by *incorporating* them into a village or city.

**2. Charter**—Whenever, therefore, the inhabitants of any portion of a town become so numerous as to require a government with more powers than the rest of the town, they petition the legislature for a law incorporating them into a village, or, if they are very numerous, a city. The law or act of incorporation is usually called a *charter*. The word *charter* is from the

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\*The word *village* very often means only a collection of houses, or of people living near one another, but in this chapter we shall use the word for an *incorporated village*. In Connecticut and Pennsylvania an incorporated village is called a *borough*.



Latin *charta*, which means paper. The instruments of writing by which kings or other sovereign powers granted rights and privileges to individuals or corporations were written on paper or parchment, and called *charters*. In this country it is commonly used to designate an act of the legislature conferring privileges and powers upon cities, villages, and other corporations.

**3. Its Contents**—The charter describes the boundaries of the city or village, prescribes what officers it shall have, and what shall be their powers and duties.

**4. City Officers**—The chief executive officer of a city is a *mayor*. A city is divided into wards of convenient size, in each of which are chosen one or more *aldermen* (usually two) and such other officers as are named in the charter. The mayor and aldermen constitute the *city council*, which is a kind of legislature, having the power to pass such laws (commonly called *ordinances*) as the government of the city requires.\* There are also elected in the several wards assessors, constables, collectors, and other necessary officers, whose duties in their respective wards are similar to those of like-named officers in country towns, or townships.

**5. Village Officers**—The chief executive officer of a village is, in some States, called *president*. The village is not divided into wards, the number of its inhabitants being too small to require such division. Instead of a board of aldermen there is a board of *trustees* or *directors*, who exercise similar powers. The president of a village is generally chosen by the trustees from their own number. In some States incor-

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\* In some cases there are two boards, in analogy with the two legislative houses of the State.

porated villages are called *towns*, and their chief executive officer is called *mayor*.

**6. General Law**—The constitutions of some States require the legislature to pass a general law prescribing the manner in which the people in any place may

DIAGRAM SHOWING THE RELATION BETWEEN COUNTY,  
TOWN, CITY, AND VILLAGE.



The whole diagram represents a county.

The numbers represent the towns into which it is divided.

*A* represents a city.

*b*, *c*, *d*, and *e* represent villages.

form themselves into an incorporated village without a special law or charter.

**7. Subject to Laws of State**—The inhabitants of cities and villages, however, are not governed alone by laws made by the common council and the trustees. Those laws and regulations relate only to local matters. Most of the laws enacted by the legislature are of general application, and have the same effect in

cities and villages as elsewhere. Thus the laws of the State require that taxes shall be assessed and levied upon the property of the citizens of the State to defray the public expenses, and the people of the cities are required to pay their just proportion of the same; but the city authorities lay and collect additional taxes for city purposes.

**8. Corporations**—We have seen that the State, counties, towns, cities, and villages are all corporations, and that there are also other corporations, such as banks, railroad companies, etc. Now all corporations are alike in some particulars. They all continue after the persons first composing them are dead. They all have power to buy and sell property, and to borrow money to a certain extent. But they also differ in some respects. A State differs from other municipal corporations in the manner of formation. A State is formed by the people when they adopt the constitution; the other municipal corporations—*i.e.*, cities, towns, etc.—are formed by the legislature. Again, all municipal corporations differ from other corporations in two particulars: their purpose and their membership. Municipal corporations are organized only for purposes of government; the others are organized for other purposes, such as business (banks, insurance companies, etc.), religion (churches), or charity (hospitals, etc.). Of a municipal corporation every one is a member who lives within its limits, whether he wishes to be or not; but in other corporations one only becomes a member by his own choice.

## CHAPTER XV

## TAXES

**1. Reasons for Them**—Every government must have the power of providing means for its support. The different State, county, and town officers must be paid salaries ; money is needed for public buildings, such as State-houses, court-houses, jails, etc. ; and there are other necessities. The money which is needed to pay the expenses of administering the government, if the State, county, or town has no permanent source of revenue or income, must be raised by taxation. A *tax* is a sum of money assessed upon the person of a citizen for the use of the government. When each one is required to pay a certain sum, the same for all, it is called a *poll-tax*, or *capitation tax*, being a certain sum on every poll, or head. But, as persons ought to contribute to the public expenses according to their ability, taxes are more just when laid upon the citizens in proportion to the property each one owns. In ordinary speech we say that the property itself is taxed.

**2. Land Tax most Common**—Both real and personal property \* are subject to taxation ; but in the United States most of the taxes are laid upon the land, for the reason that it is always difficult for the assessors to ascertain all the personal property each one owns. Poll-taxes are laid in many States, but they are very small.

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\* *Real estate*, or *real property*, is land with the buildings and other articles erected or growing thereon. *Personal estate*, or *personal property*, is every other kind of property ; such as, goods, stocks and bonds, money, and debts due from debtors.

**3. Assessment**—This means valuation. As every person is to be taxed in proportion to the value of his property, it is necessary, first, to make a correct valuation of all his taxable property. For this purpose, the assessor or assessors pass through the town, and make a list of the names of all the taxable inhabitants, and the estimated value of the property, real and personal, of each. If any one thinks his property is valued at too high a rate, he has an opportunity to appear before the assessors and ask to have the assessment reduced. The town assessors then make returns to the proper State and county officers of all the property, and its valuation, in the town.

**4. Information**—In some States persons liable to taxation are themselves required to furnish lists of all their taxable property, printed blank lists having been previously distributed among them for this purpose. To secure an accurate valuation, the assessors (called also *listers*) may require persons to make oath that they have made a true statement of their property and its value.

**5. Exemptions**—There are certain kinds of property which are exempt from taxation ; such as the corporate property of the State, of counties, and of towns, including the buildings in which the public business is done, the prisons, jails, asylums, etc., and the lands attached to them ; school-houses and churches, with the lands attached ; burying-grounds, and the property of literary and charitable institutions. But the property of business corporations, as railroad, banking, insurance, manufacturing, and other stock companies, like that of individuals, is liable to taxation.

**6. Three Amounts**—Before a tax-list can be made

out, showing what each one's tax is to be, it must be known what amount is to be collected in each town. This amount is made up of three parts: first, the sum wanted to pay the expenses of the town for the current year; second, the town's share of the county expenses; and third, its proportionate share of the expenses of the State government, or of what is to be raised for State purposes. In this country the amount that each one pays for State purposes is usually very much less than what he pays for county and town purposes. The ratio of the county to the town tax varies in proportion to the political importance of the county and town. In many States there is no town tax.

**7. Apportionment**—The apportionment of the amount of the State and county expenses among the several towns is made according to the amount of property in each as valued by the assessors. The State auditor or comptroller, having received from the several counties returns of the value of the property in each county, is enabled to determine its quota of the amount to be raised for State purposes. He sends to the proper officers in each county (county commissioners, or board of supervisors) a statement showing what part of the State tax the county is to pay. The county officers add to each county's share of the State expenses the sum to be raised in the county for county purposes, and apportion the whole amount among the towns in proportion to the value of the property in each. Then the town officers, in turn, add to each town's share of the amount of the State and county expenses the amount to be raised for town purposes, and this gives the whole sum to be collected in the town. This sum



is divided up among the inhabitants of the town in proportion to their property as valued by the assessors, and a tax-list, showing what each one is to pay, is given to the collector. In cities and villages each one's tax includes also his proportionate share of the amount to be raised for city, or village, purposes. Taxes in cities are usually very much higher than anywhere else.

**8. Collection**—When the collector has received the taxes he pays them over to the town treasurer. The latter retains the portion collected for town purposes, and remits the remainder to his county treasurer. The county treasurer retains the portion collected for county purposes and remits the remainder to the State treasurer. The system of assessment and collection of taxes varies in the different States. The system described in this chapter applies chiefly to the Northern States.

**9. Tax Sales**—Where a person neglects to pay his tax, means are provided by law to enforce payment. If he is taxed for personal property, sometimes the collector may seize his goods and sell them, and sometimes suit must be brought in the usual way. But if he is taxed for land, a different course is pursued. In a certain sense, the land itself is taxed. If the tax is not paid within a certain time, the proper authorities sell or lease the land for a certain period to any one who will pay the tax. The owner then has the right to redeem within a certain time, generally two or three years, by paying to the purchaser what he has paid for taxes, with interest. The purchaser does not have the right to take possession of the land until the time to redeem has expired.

**10. Assessments**—*Assessment* has been used in the



sense of valuation. But it is also often used to mean a tax laid in a city to pay for some public improvement ; such as, the building of a sewer, the paving of a street, the laying out of a park, etc. In such cases the benefit of the improvement is felt, sometimes wholly, generally chiefly, by those who live near, and therefore they are required to pay for it. For instance, when a sewer is built in a side street, only the property on each side of that street is assessed for it.

**11. Indirect Taxes**—The taxes that have been described are called *direct taxes*. But there are also *indirect taxes*, so called because, when finally paid, they are not paid directly to the government as a tax, but as a part of the price of something. They include duties which are paid on goods exported from a country or imported into it, on goods manufactured, licenses for carrying on certain trades, or for doing certain things, etc. For instance, if a tax is laid on the manufacture of liquors, the manufacturer adds enough to the price of the liquor to cover the tax, and so the consumer, when he buys, indirectly pays the tax. Only a small portion of the revenue of a State is derived from indirect taxation. The United States Constitution forbids any State to lay import or export duties.

## CHAPTER XVI

### EDUCATION

**1. A Proper Object of Government**—The proper object of government is to promote the welfare and happiness of its citizens. For this purpose it must protect the people in the enjoyment of life and the

fruits of their labor. But it should go further, and make express provision for improving the condition of the people, especially the less fortunate portions of them. The prosperity of a state or nation depends essentially upon the education of its citizens. Ignorance tends to make men idle and vicious. On the other hand, education not only teaches them better ways of living, but impels them to follow the better ways, and gives them higher purposes in life.

**2. A Political Necessity**—But further, we believe that a government by the people is better adapted than any other to promote the general welfare where the people are fitted to govern. But if the people are not properly educated, they are incapable of self-government. Some children are educated at private schools. But very many are unable to pay for the education of their children in that way, and therefore each State has established a system of *common schools*, at which the children of all may be taught at the public expense. These are the schools we shall treat of in this chapter. It is to its common-school system that the United States owes much of its prosperity as a nation. This system has been developed more highly at the North than at the South. But the constitutions adopted in the Southern States since the late civil war have made much more adequate provision for this necessity than existed in those States previously.

**3. Support**—The schools are supported chiefly by taxation. In some cases those who send their children there have to pay a higher rate than others. But in almost all the States there is provided a school fund, the income from which is applied to aid in their sup-

port. A *fund* is a sum of money, the income from which is set apart for a particular purpose. Thus the interest of a school fund is applied in building school-houses, paying teachers, etc. The whole amount expended on common schools in the United States in 1892 was about \$155,980,800.

**4. Creation of School Funds**—These were created in the older States by the State's appropriating certain lands owned by it for that purpose. They were, in many cases, largely increased by certain moneys received from the United States. In 1836 there had accumulated in the national treasury about thirty millions of dollars over and above what was needed for the support of the government. By an act of Congress, this surplus revenue was distributed among the States then existing, to be kept by them until called for by Congress. That it never will be called for is now almost certain. Many of the States have appropriated large portions of their respective shares for school purposes. From its having been said to be only *deposited* with the States, this fund is sometimes called the *United States deposit fund*. As to the Western States, at an early period, while most of the territory from which they have been formed was yet the property of the United States, and uninhabited, Congress passed acts by which a certain proportion of the land in every township is reserved for the support of schools therein. By these acts, in some of those States one thirty-sixth, in others one eighteenth of the whole State has been thus appropriated, besides smaller portions granted for the benefit of a university in each State. In States which may be hereafter formed out of existing territories, land will be reserved in the

same way. The whole amount of the permanent common-school funds in the United States has been calculated to be about \$140,000,000. The income from this is applied to school purposes every year.

**5. Districts**—The towns, or townships, of a State are generally divided into districts of proper size, in each one of which is established a school, to which all the children of the district may go, free of expense. These schools are sometimes called *district schools*, sometimes *common schools*, and sometimes *public schools*. Each district has apportioned to it its share of the income of the school fund, and the rest of the money needed to support the school is raised from the inhabitants of the district or the State by taxation. One or more *trustees* or *directors* are chosen in each district to manage the school affairs.

**6. State Superintendent**—In many States there is an officer called the *State superintendent of public schools*, or *superintendent of public instruction*. The superintendent collects information relating to the schools; the number of children residing in each district, and the number taught; the number of school-houses, and the amount yearly expended; and other matters concerning the operation and effects of the common-school system. Sometimes he also apportions the money arising from the State funds among the several counties. He reports to the legislature at every session the information he has collected, and suggests such improvements in the school system as he thinks ought to be made. There are officers in each county or town to aid him in this work. There are also officers in each county or town who examine the teachers periodically to see if they are competent.

**7. Grades**—Public schools are divided into three grades: *primary* schools, for the youngest pupils; *grammar* schools, in which are taught, besides the ordinary, some of the higher branches of study; and *high* schools, for the most advanced, in which are taught the studies necessary for a business education, and frequently the languages and higher mathematics. Many contend that the public should not be taxed to furnish a higher education, but that it should be left to the private citizen. Others maintain that the general good demands that some should be highly educated. But, though many States have high schools, universities, and other educational institutions, supported or aided by the State, the great body of schools in the country still are of the lower grade.

**8. Compulsory Attendance**—In general, the State does not compel parents to send their children to school, but relies upon their own sense of duty and interest. But in a few States it does, and every child is compelled to go to some school, public or private, a certain portion of every year between the ages of seven and fourteen. And the idea is gaining strength in the country that the interest of the whole people requires that every child should be educated to a certain degree.

**9. Normal Schools**—These are schools in which persons are trained to be teachers. If a State is to furnish education to its citizens, it must provide suitable educators, and therefore most States have established one or more of these schools. They are free to any one, but in return the person taught must serve a certain length of time (two or three years) as a teacher in the common schools of the State. In that way he pays for his education.



## CHAPTER XVII

## PUBLIC INSTITUTIONS

**1. Duty of Government**—We have seen that a government ought to provide means not only for the protection of the lives and property of its citizens, but also for their education. But there are further duties which it owes to its citizens. It ought to furnish protection and aid to those who are unfortunate, the insane, the blind, orphan children, and others who are unable to care for themselves. So, too, if there is any great enterprise in which all the people of the State are interested, but which is too large or too costly to be carried on by private individuals, the State should render aid. Again, a State should exercise some control over the operations of corporations having large powers, such as railroads and banks, in order to prevent fraud upon the people. These duties are important functions of the executive department.

**2. Asylums**—Every State establishes and supports some of these for the insane, blind, deaf and dumb, inebriate, orphans, and others. At them support and medical aid are furnished to such as have no means of providing for themselves. Counties, towns, and cities often maintain institutions of the same kind.

**3. Canals**—These do not exist in all the States, and in some they are constructed and managed by private corporations. But in others they are State works, built by the State and managed by officers elected by the people. New York, Pennsylvania, and Ohio have many. Their object is to furnish cheap trans-



portation, and at one time they were considered of vast importance, but railroads have in a great measure taken their place. Where the State undertakes such an enterprise, very often a fund is provided by the State, the income of which is applied to the object, and the United States increases this fund by grants to it of public lands, because the canal is a benefit not only to the people of the State, but also to all the people of the Nation.

**4. Railroads**—These are seldom State works, but they often receive aid from the State in the form of money lent them, public land granted to them, or State guaranties of their bonds. In a certain other respect all railroads are aided by the State. The property which a railroad company requires very often cannot be purchased, as the owners will not sell, and no person or corporation has, in itself, the right to compel them to sell. But a State has the right to take any one's property for public use on paying its value. This is called the right of *eminent domain*, and this right the State delegates to the railroad company for the time being. Appraisers are appointed who value the land, and on payment of that price the company takes it. The land necessary for a canal is acquired in the same way.

**5. Control of Corporations**—The State generally exercises some control over certain corporations which, like railway or canal companies, banks, and insurance companies, have large powers and privileges. This is to prevent their being used to the fraud and injury of the public. In some States there are departments, such as the *bank department*, or the *insurance department*, all subordinate branches of the executive depart-

ment, which are required to exercise supervision over the corporations belonging to their department within the State. They collect information with regard to them, their property and business, by means of examinations and of annual reports which the corporations are required to make, and this information is published. When State banks issued bills (which were only their promises to pay money), they were often required to deposit a certain amount of property with the State to secure those who used their bills as money against loss. So, too, insurance companies are sometimes required to make deposits with the government to secure their policy-holders. There are other ways in which a State exercises control over corporations.

**6. State-Prisons**—These are prisons maintained by the State, in which criminals convicted of the higher crimes are confined. The county jails are for the lower grades of criminals. Convicts are forced to work while confined. In many States their labor is leased by the State to certain contractors, who pay the State as for so many laborers. Thus State-prisons are sometimes rendered self-supporting.

**7. State Debts**—Very often the public works undertaken by a State require more money than can be conveniently raised at once by taxation. So, too, perhaps the chief benefit is going to accrue, not to people living at the time the work is done, but many years later, and therefore posterity should bear some share of the burden. In such case the State borrows the money and issues its bonds for it, also called *State stock*. Counties, towns, and cities, in the same way, often incur debt and issue bonds for public works. But there is this difference: counties, towns, and cities may

be sued in the courts, but there is no way for a private individual to force a State to pay its debts. Such refusal to pay is called *repudiation*, and several of the States have repudiated their debts in part. For the reason that there is no remedy, repudiation is the more dishonorable. In the late Civil War the Southern States contracted large debts, but these the United States Constitution forbids them to pay. No government could recognize as just, or allow to be paid, if it could prevent it, any debts incurred in a rebellion against it.

## CHAPTER XVIII

### MILITIA

**1. Meaning of Militia**—Every nation has its military force to resist foreign enemies and crush rebellion. It consists of two portions, the *standing army* and the *militia*. The standing army is all the time organized, equipped, and drilled, and its members have no other occupation. The militia consists of all the other able-bodied men in the nation (between certain ages), but it is not called into service except in time of war or insurrection. In this country the Nation has a small standing army, and its militia consists of the militia of all the States. The States have no standing army, but each has its militia.

**2. Of Whom Composed**—The militia of a State consists of able-bodied male citizens of the United States between the ages of eighteen and forty-five years who reside in the State, except such as are exempt by the laws of the State and of the United States. Persons exempt by the laws of the State are

generally members of the State legislative, executive, and judicial departments, clergymen, teachers, physicians, firemen, and members of military companies who have served a certain time.\* Persons exempt by United States laws are members of the national legislative, executive, and judicial departments, pilots, mariners, and a few others.

**3. Commander-in-Chief**—By the constitutions of the several States, the governors are made the commanders-in-chief of the militia of their respective States. The governor has power to call it out in time of insurrection or rebellion,† and when called out he exercises the usual powers of commander over it. He cannot, however, send any member out of the State without his own consent.

**4. Organization**—The militia, when organized, is divided in the usual way into brigades, regiments, companies, etc., with the usual officers: adjutant-general, colonels, captains, etc. In some States the officers are appointed by the governor or the legislature; in others they are elected by the men they are to command. But in most of the States the militia remains practically unorganized.

**5. Training**—For many years after the Revolution, when the militia was more or less organized all the time, it was called out annually in each State for the purpose of training; but these annual trainings were seen to be of so little value that they gradually fell

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\* In many States those, also, are exempt who have conscientious scruples as to whether war is ever right, such as the Quakers.

† An *insurrection* is an attempt of persons to prevent the execution of a law. *Rebellion* generally means nearly the same; but more properly it signifies a revolt, or an attempt to overthrow the government to establish a different one.

into disuse. At present the militia in this country is not much more, practically, than an imaginary body, and the great body of the people have no military duties to perform.

**6. Volunteer Regiments**—But occasions do arise when it is necessary for a State to have some organized, equipped, and drilled force at hand. This necessity is supplied by the volunteer companies, or regiments, existing in most of the States. These organize themselves, elect their own members and officers, select their own uniform, and the branch of the service to which they will attach themselves. The State usually grants them more or less aid, in the way of arms, armories, etc. When organized, they come under the military laws of the State, and are subject to orders of the commander-in-chief, in the same manner as the militia is, and he can call them out when necessary. These regiments are called in some States the *national guard*, and popularly they are called the *militia*.

**7. United States Militia**—We have said the militia of the United States consisted of the militia of all the States. The President has power to call it out at times when the standing army is not sufficient, and when so called out it passes out of State control and under that of the United States. But this refers to the unorganized militia. Over the volunteer regiments spoken of in the preceding section the United States has no control. The national government will probably never call out the unorganized militia, but will rely on the formation of volunteer regiments. In the late Civil War most of the United States army was composed of volunteer regiments formed in the loyal States, and then mustered into the United States service.



## SECTION IV.—JUDICIAL DEPARTMENT

## CHAPTER XIX

## COURTS

**1. Necessity**—The judicial department consists of the courts of a State. We have seen that the legislative department makes laws and the executive department carries them out ; but there is one other function of government which properly comes in between the making and the execution of the law. This is its application to particular cases when disputes arise. Very often in a particular case it will be hard to tell what the truth is, as one party will say one thing and the other another ; and again one side will claim that the law does not include his case, and the other side will claim that it does. These points must be decided before the law can be executed. The executive department might decide them, but justice is more likely to be done if the one that decides has nothing else to do with the case. For this reason the separate judicial department is established. The higher courts of a State are usually established by its constitution, the lower courts by the legislature.

**2. Diversity**—There is great diversity among the States in the names and powers of the different courts. No two States are exactly alike. But the following sketch gives a general idea of the judicial system prevailing in most of the States.

**3. Court for the Trial of Impeachments**—This is the name applied to the upper house of the legislature



when trying a public officer for malfeasance (*i.e.*, corrupt conduct) in office.\* *Impeachment* is the formal act of the lower house by which it makes the charge against him.† Generally the lower house has the sole right of impeachment, and the upper house the sole right to try impeachments. On such trial the upper house is in reality a court.‡

**4. Supreme Court**—This is the name usually given to the highest court—of which there is only one—in the State. It consists of several judges (very often three), and has usually only appellate jurisdiction.§ Appeals may be taken to it in both civil and criminal cases,|| from the next lower—the Circuit—courts.

**5. Circuit Courts ¶**—Of these there are generally a

\* As, if a governor, for money offered him, should approve and sign a law ; or a judge should, for money or from some other selfish or personal motive, give a wrong judgment.

† It must be remembered that impeachment is not the conviction of the offence, but only the accusation. It is analogous to an indictment by a grand jury. (See page 87.) It may happen, therefore, that an officer is impeached and afterward acquitted on the trial, as President Andrew Johnson was in 1868.

‡ This practice has come from Great Britain, where the impeachment is made by the House of Commons, and the House of Lords is the High Court of Impeachment.

§ The word *jurisdiction* is from the Latin *jus*, law, and *dictio*, a pronouncing or speaking. Hence the *jurisdiction* of a court means the class of cases in which it has power to pronounce the law. A court is said to have *original* jurisdiction when the case may originate (be commenced) in it ; it has *appellate* jurisdiction when it may hear the case on appeal from a lower court.

|| *Civil* cases are those between private parties for debt or for some injury to person or property. *Criminal* cases are those in which the State seeks to punish one for some criminal offence.

¶ They derive their name from this circumstance : Each court has

number (from ten to thirty) in every State, one for each district into which the State is divided. In many States they are called *district courts*, because there is one in each district; in a few they correspond to the *superior* courts, so called because they are of higher grade than the justices' courts. They have original jurisdiction, in general, of all classes of cases, both civil and criminal, and are the courts in which the great body of trials are had. They also hear appeals from the lower courts.

**6. Justices of the Peace**—In each town, or similar division, there are usually several of these officers. Each justice holds court, and has power to try civil cases which involve small amounts (in some States it must be less than \$100, in others less than \$50), and to try persons who have committed small offences. They also have important powers with regard to arresting and examining those accused of higher crimes. (See page 88.) In many States they have executive duties also.

**7. Probate Courts**—There is usually one of these in every county, composed of a single judge. They are quite different in character from the courts already described. Their powers and duties relate to the estates of deceased persons, to see that they go to the

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its district, including several counties, and as the law usually requires, for the convenience of suitors, that the court be held once or twice a year in each county, the judges travel from one county to another.

In some of the States of New England this system of courts does not exist. The highest court performs their duties, having both original and appellate jurisdiction. It will be noticed that New England is different from the rest of the country in many of her political institutions.

persons entitled to them. They take proof of wills and empower executors to act.\* Where a person dies without a will the probate court appoints an *administrator*, who distributes the personal property (for distinction between personal and real property, see page 63) among the relatives to whom it belongs by law.† It has power to remove the executor or administrator if he does not do his duty ; to settle his accounts ; and decide disputes which arise, as to the distribution of the estate. Probate courts also take charge of the estates of minors whose parents have died, and appoint guardians for them. For this reason they are sometimes called *orphans' courts*. Appeals may be taken from these courts to the Supreme Court, or sometimes to the Circuit Courts.

**8. Courts of Chancery** exist in several States. They have power to grant certain kinds of relief that, in the States where they exist, the other courts can not ; such as compelling a man to perform a contract, instead of awarding money as damages for his not doing it, or granting an injunction against one's doing an unlawful act. These are also called *courts of equity*. It is unnecessary to enumerate their powers, as in most States they do not exist, and there the other courts have all their powers.

**9. Other Courts**—In some States there are other

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\* A will is a writing by which a person directs to whom his property shall be given after his death. The Latin *probatus* means proof, from which the courts derive their name. An *executor* is a person appointed in a will to carry out its provisions.

† An administrator has no jurisdiction over the land owned by the deceased that the heirs can take possession of without any authority from the court. An executor, in general, executes the will both as regards personal and real property.

courts with various powers. *County courts*, or *courts of common pleas*, exist in some, having jurisdiction in civil cases, somewhat higher than justices' courts; *courts of sessions* and *courts of oyer and terminer*, where they exist, are courts of criminal jurisdiction; *police courts* are often established in cities with jurisdiction to try the lower criminal offences; large cities generally have additional courts.

**10. Elections and Terms**—Judges are sometimes elected by the people, sometimes by the legislature, and sometimes appointed by the governor. The terms of office vary, being generally six to ten years in the higher courts, while justices of the peace are elected or appointed every one or two years. In a few States (in New England) the judges of the highest court hold office for life, or until seventy years of age. Like legislative and executive officers, they receive salaries fixed by law.

## CHAPTER XX

### LEGAL PROCEEDINGS

#### *a. Impeachment*

**1. Impeachment**—A complaint against the officer having been brought formally before the lower house of the legislature, it votes whether he shall be impeached or not, and if it is decided that there are sufficient grounds for the charge, *articles of impeachment* are prepared and delivered to the upper house, and a committee of *managers* is selected from the members of the lower house to conduct the prosecution.

**2. Trial**—The upper house (senate) then convenes

as a court, the accused person is summoned to answer the charge, and a time is fixed for the trial. The trial is conducted in much the same way as a trial in other courts, and at the close the senate votes upon his guilt, a two-thirds vote being generally required to convict. If convicted, the court may remove him from office, or disqualify him to hold any office in the State, for a time, or for life; or may both remove and disqualify him. This court can pronounce no other sentence. But if the act committed is a crime, the offender may also be indicted, tried, and punished in a court of justice.

### *b. Proceedings in Ordinary Civil Cases*

**3. Parties**—In both civil and criminal cases the party suing is called the *plaintiff* (*i.e.*, the one complaining), and the party sued the *defendant* (*i.e.*, the one defending himself).\*

We will now give a sketch of the ordinary steps in a civil action in their order.

**4. Summons**—Except in the lowest courts, all the proceedings in a lawsuit are taken by means of written papers. This is that they may be preserved. The first paper is ordinarily a *summons*. This is a writ issued by the court at the instance of the plaintiff, and

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\* In a criminal case the State is the plaintiff, and the accused the defendant. The State—*i.e.*, the whole people—are the ones injured by a crime. For example, in New York State the title of a criminal case is "The People of the State of New York against John Smith." Also, the person against whom the offence is committed has his civil remedy, a suit for damages, against the offender. So that in the case of a criminal offence (for instance, assault and battery) the injured party can sue the offender for damages, and the State can punish him at the same time.



served upon the defendant, summoning him to appear in court. Generally this appearance is made not by coming into court in person, but by the defendant's attorney\* filing a notice in the clerk's office. If he does not appear within a certain time, the plaintiff may take judgment and issue execution immediately. (See page 86.)

**5. Pleadings**—If the defendant appears, the plaintiff is then required to file or serve his *declaration* or *complaint*, setting forth what he claims, and the facts on which he bases the claim. The defendant then files or serves his *plea*, or *answer*, or *demurrer*,† setting forth his defence; that is, the reasons why he thinks he should not be compelled to do what the plaintiff demands. These papers are called the *pleadings*. Sometimes other papers are necessary. If the pleadings agree as to the facts, the matter is then presented to the court, and it makes its decision, without—what is popularly called—a trial. But if the pleadings do not agree as to the facts—if, for instance, the plea denies any fact the declaration sets out—this dispute must be settled by a trial.

**6. Jury**—Trials may be had before the court alone, but in many cases either party may claim the right to have disputed facts decided by a *jury*.‡ In the higher courts a jury consists of twelve men; in justices' courts, of six. At every term of court (except in jus-

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\* In this connection an *attorney*, or *counsel*, is a lawyer who conducts a lawsuit for a person. In a broader sense, attorney often means an agent to transact any business.

† These words have different meanings, unnecessary to state here.

‡ So important is this right considered that it is guaranteed to every one, in certain cases, by most of the State constitutions. It was derived from England, where it has been enjoyed many centuries.



tices' courts) a number of men residing in the county are summoned to attend court to serve as jurors during the term, which lasts one or two weeks. From these the jury in each particular case is chosen by lot.

**7. Trial**—As soon as the pleadings are filed or served either party may summon the other to trial. If either party does not appear at the trial, the other may have judgment against him. If the witnesses are unwilling to come, a subpœna (pronounced *suppēna*) may be issued to them. This is a writ from the court commanding them to attend, under heavy penalties if they do not. A judge always presides at the trial, and decides whether the evidence offered by either side is proper to be admitted in the case. The usual course of proceeding is as follows: The plaintiff's counsel opens the trial by briefly stating what the case is, and then examines such witnesses as he chooses, the defendant's counsel having the right to cross-examine each one, if he thinks the testimony needs to be made clearer; this examination and cross-examination is made by the counsel asking questions which the witness must answer, and the witness is not allowed to do anything but answer the questions put him; after the plaintiff has presented all his witnesses, the defendant's counsel, in turn, briefly states what his defence is, and examines his witnesses, the other side cross-examining each one if he desires; the defendant's counsel then makes an argument upon the case, and the plaintiff's counsel closes with his argument. This ends the trial if it is before the court alone. But if it is before a jury, the judge delivers a *charge* to the jury, giving them a summary of the evidence on both sides and pointing

out to them the points they are to decide. The jury then retire, and deliberate in secret.

**8. Verdict**—If the jury cannot agree, they are discharged, and another trial may be had; but if they agree, they return to court and announce their *verdict*. This word is from the Latin *verum*, true, and *dictum*, saying. In most States all the members of a jury must agree before a verdict can be rendered.

**9. Judgment**—After a verdict, or decision of a case by the court, formal judgment is entered (*i.e.*, filed or recorded), and the successful party may add as a part of it what are called *costs*. These are certain sums of money allowed to him to compensate for his expenses. It is considered just that the one who is decided to be in the wrong should pay all the expense.

**10. Appeal**—If the defeated party thinks justice has not been done, he may appeal to the next higher court. This court does not try the case over again, but simply examines all that was done in the lower court to see if any error was committed. If there was none, it *affirms* the judgment; but if any—even a slight—error was committed, it *reverses* the judgment and grants a *new trial*, which is conducted in the same way as the first. In many cases, if either party is dissatisfied with the decision of the higher court he may appeal to a still higher one, which, in turn, affirms or reverses. In this way a single case may have three or four trials, and five or six appeals, though that is very unusual. Small cases cannot generally be appealed to the highest court.

**11. Execution against Property**—After judgment is obtained against one, if he does not pay it, a writ called an *execution against the property* may be issued

to the sheriff. This commands him to seize the debtor's property and sell it until he has sold enough to satisfy (*i.e.*, pay) the judgment. Certain articles, such as household goods and clothing, cannot be sold by the sheriff.

**12. Execution against the Person**—Formerly, in addition to the execution against property, an *execution against the person* could be issued in all cases. This commanded the sheriff to put the debtor in jail until he paid the judgment. But now this extreme remedy is abolished, except in cases where the judgment is obtained for some act implying moral turpitude, such as libel, assault, fraud, etc. In cases of ordinary debt, such as for goods sold, money borrowed, etc., this execution cannot be had.

### *c. Proceedings in Criminal Cases*

**13. Indictment** \*—It is usual for State constitutions to contain provisions requiring that before one can be tried for a criminal offence (except a petty one) he must be indicted by a grand jury. A *grand jury* is a body of citizens (usually twenty-three) summoned in every county several times during the year, to inquire what crimes have been committed in the county. An *indictment* is a formal accusation made by a grand jury against a person that he has committed a crime. The process of indictment is as follows: Some one, usually the district attorney, brings the fact of a crime to their notice; the jury then summon the witnesses† named and examine them; if twelve of the jurors vote that there is sufficient cause for putting him on trial, the

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\* Pronounced *inditement*.

† No witnesses in favor of the accused are examined by the grand jury.

indictment is drawn up by the district attorney, endorsed "a true bill" by the foreman of the grand jury, and then sent to the court. These proceedings are kept secret, in order to prevent the offender's escape.

**14. Arrest and Bail**—A warrant may then be issued for the arrest of the accused. If arrested, he may give *bail*, except in cases of crimes punishable by death, like murder. Giving bail consists of giving a bond, by which the bondsmen agree to pay the State a certain sum of money if the prisoner does not appear when he is wanted. The prisoner is then released until his trial. He is then supposed to be in the custody of his bondsmen, and they can arrest him at any time.

**15. Examination**—But often it is feared that if an indictment is awaited the offender may escape. In such case a complaint is sworn to before a justice of the peace, or other magistrate, and he issues a warrant. When the arrest is made the accused is brought before him, and he makes a short examination of the case. If the evidence is such that he thinks the accused should be tried, he commits him to prison to await the action of the grand jury, or if the case be not indictable, to be tried at the next court. He may then give bail.

**16. Habeas Corpus** \*—If the prisoner thinks that

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\* This is the most famous writ in the law. It applies to all cases where one person is unlawfully restrained by another, as well as to persons charged with criminal offences. It is often used by a father to gain possession of his child which has been unlawfully taken from him. So important is it considered that State constitutions often provide that the right of having the writ shall not be suspended by the legislature except in time of rebellion or invasion. It protects the right of personal liberty by causing the ground of arrest or restraint to be examined by a competent judge.

his arrest is unlawful, he, or any one in his interest, may apply to any judge of a higher court for a writ of *habeas corpus*. This commands the sheriff, or whoever has him in custody, to bring him before the judge. The case is not tried then, but the judge simply examines the case to see whether the arrest is lawful; that is, whether any crime is charged, or whether there is any proper complaint. If he decides that the prisoner is lawfully held, he remands him to prison; if not, he orders him released.

**17. Trial**—Due notice being given to the prisoner, and a counsel to conduct his case being furnished him by the State, if he has none, he is brought to trial, and, except in petty cases, has the constitutional right to be tried by a jury. He is first called upon to *plead* to the indictment (*i.e.*, answer it), and he may plead “guilty” or “not guilty.” This is called *arraignment*. If he pleads “guilty,” he is immediately sentenced; if “not guilty,” the trial proceeds. The course of the trial is the same as in civil cases: the opening addresses; examination and cross-examination of the witnesses on each side; the arguments of counsel; the charge; and the verdict (see page 86). After verdict he is discharged or sentenced, according as he is found innocent or guilty.

#### *d. Other Proceedings*

**18. In Probate Courts**—Here the proceedings, though somewhat different, bear a resemblance to those in other courts. Generally there is no contest; but when there is the court proceeds in much the same way as other courts, but without a jury.

**19. Special Proceedings**—The proceedings already

described do not embrace all the varieties. Courts are applied to for a great many objects, which cannot be enumerated here, and the proceedings taken differ in different classes of cases. But in all legal proceedings the object is to bring all the parties interested before the court, so that it may learn what all claim, and give each one a chance to disprove misstatements made by any one else.

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## REVIEW QUESTIONS

### GENERAL PRINCIPLES OF GOVERNMENT

#### *Necessity for Society and Government*

1. Why is civil society necessary to mankind ?
2. From what does the right of private property come ?
3. What is law ? Why necessary ?
4. Why is government necessary ?

#### *Classification of Rights and Law*

5. What is a right ?
6. What are political rights ? In what act does a man exercise them ?
7. Name the different classes of civil rights.
8. To what class do religious rights belong ?
9. What is the difference between the moral law and the law of nature ?
10. What is the difference between the moral law and municipal law ? Which is the broader ? Why ?



*Forms of Government*

11. Name and define the three fundamental forms of government.
12. What is a despotism ?
13. To what form of government does England belong ? Is it absolute or limited ?
14. Explain the difference between a Republic and a Pure Democracy.
15. To which form does the United States Government belong ? To which do the State Governments ? Why ?

STATE GOVERNMENTS

*Constitution : Election : Departments*

1. What is a constitution in this country ? How many are there here now ?
2. How are constitutions framed ? By whom, and how, adopted ?
3. Name the usual qualifications of voters, as to age, sex, residence, property, character, and color.
4. Describe the manner of conducting an election.
5. What is registration ?
6. What is the difference between a majority and a plurality ? Which, usually, is necessary to elect a person ?
7. How many departments of government are there ? Give the name and duties of each. Why are they kept distinct ?

*Legislative Department*

8. Name the two branches of the legislature. Which is the larger house ? Which the more select ?
9. Are legislators elected or appointed ?
10. How often do legislatures meet ? What does organization consist of ?
11. What is a quorum ? How many usually constitute it (*i.e.*, what proportion) ?
12. Are the proceedings of legislatures open or secret ?
13. Describe the usual method of enacting laws.
14. What are the purpose and use of committees ?
15. What is a veto ? Its effect ?
16. Is a law valid which is passed with all the formalities which the constitution prescribes, but not according to the rules of the legislature ?

*Executive Department*

17. Who is the chief executive officer of a State ? How does he differ from a king ?
18. Name his principal powers.

19. Name the other high executive State officers, and their duties.
20. What are the territorial divisions of a State ? Their purpose ?
21. Which is the more important political division (county or town) in the Southern States ? In New England ?
22. What is a municipal corporation ? Give some examples.
23. Name the principal county officers, and their duties.
24. Which represent the county, and which the State ?
25. Name the principal town officers, and their duties.
26. Are officers of the executive department elected or appointed ?
27. What is a city ? A village ? Why are they incorporated ?
28. Are inhabitants of cities and villages subject to the general laws of the State ?
29. In what particulars do municipal corporations differ from private ? The State from other municipal corporations ?
30. What is a tax ? Its purpose ?
31. Upon what kind of property are most of the taxes collected ?
32. What are assessors ?
33. How is a tax collected when the party will not pay it, in case he is taxed for personal property ? How, in case he is taxed for land ?
34. Explain why any government should furnish some education to its citizens. Why should we in this country especially ?
35. How are common schools supported ?
36. Name some public institutions supported by the State.
37. How does a railroad or canal company acquire its land ?
38. Explain the difference between militia and a standing army.
39. Of what is a State militia composed ? Of what, the United States militia ?
40. Who is the highest officer of the State militia ?
41. What are volunteer regiments ?

### *Judicial Department*

42. What duties does the judicial department perform ?
43. What is impeachment ? What body tries impeachments ? What judgment may it render ?
44. What is the difference between a civil and a criminal case ? Between original and appellate jurisdiction ?
45. Name the three grades of law courts in a State, with the usual jurisdiction of each. About how many courts are there in each grade ?
46. What are the duties of probate courts ?
47. Describe the progress of an ordinary civil case. Describe the course of a trial.
48. In what civil cases may a defendant be arrested ?
49. What is an indictment ? A grand jury ?
50. Describe the progress of an ordinary criminal case.
51. Who is the plaintiff in a criminal case ?

## DIVISION III

### NATIONAL GOVERNMENT

#### SECTION I.—ITS ORIGIN AND NATURE

#### CHAPTER XXI

##### GOVERNMENT BEFORE THE REVOLUTION

**1. The United States a Nation**—Besides the State governments that we have described, there is in this country another government, to which all the people of all the States are subject, and which, in its own sphere, has paramount authority over all the State governments. This is the United States Government. The people of all the original States severally adopted another constitution, the United States Constitution. This established another and superior government for all the people, which is therefore called the National Government. In this document the Nation is called "The United States of America." To assist the reader in understanding the Constitution and government of the United States, we shall first give a sketch of the governments which preceded the Revolution, and of the principal causes which led to it.

**2. The Colonies**—Most of those who study this work probably know that our present State and national governments were not established by the early settlers in this country. The first inhabitants (except the Indians) were *colonists*. A *colony* is a settlement

of persons in a distant place or country, who remain subject to the government of the country from which they came. At the time of the Revolution there existed here thirteen colonies, settled mostly from Great Britain, all subject to the British sovereign, but independent of each other.

**3. Colonial Governments**—The political rights and privileges enjoyed by the Colonists as British subjects were limited. The people had not then, as now, constitutions of their own choice. There were colonial governments; but they were such as the king was pleased to establish, and, generally, might be changed at his pleasure. These governments were in *form* somewhat similar to that of our State governments. There was what might be called a legislature; also an executive or governor; and there were judges. But of the officers of these departments of the government, only the members of the lower branch of the legislature were elected by the people. The other branch was composed of a small number of men, called a *council*; but they were appointed by the king and subject to his control, as was also the governor, who had the power of an absolute negative or veto to any proposed law. And laws, after having received the assent of the governor, had to be sent to England and approved by the king before they could go into effect. The judges were appointed by the governor. The Colonies were also subject to the laws of the British Parliament.

**4. Good Laws Denied**—Hence we see that the colonists had no security for the passage of such laws as they wanted. And the consequence was that they were often denied good laws.

**5. Oppressive Laws of Parliament**—Not only so; many laws enacted by Parliament were very unjust and oppressive. The object of these laws was to secure to Great Britain alone the trade of the Colonies. One law declared that no goods should be imported by the Colonists but in British vessels; if brought in other vessels, both the goods and vessels were to be forfeited to the British Government. Another law declared that no iron wares should be manufactured by the Colonists, so as to compel them to buy of Great Britain. So also the Colonists were permitted to ship to foreign markets such products only as British merchants did not want. They were prohibited from selling abroad any wool, yarn, or woollen manufactured goods, in order to keep the foreign markets open for British wool and manufactures.

**6. Duties**—One way taken to compel the Colonies to buy of Great Britain alone was to impose heavy duties on goods imported from anywhere else. For instance: the Colonists traded with the West India islands, some of which belonged to Great Britain, some to France, and some to Spain. To secure the whole trade to the British islands, the British Government imposed high duties upon the molasses, sugar, and other articles imported into the Colonies from the French and Spanish islands. The people of the Colonies were therefore obliged to import the above-mentioned goods from the British islands only, while, if there had been no duty, they could have obtained them more cheaply from the others.

**7. Taxation without Representation**—Not satisfied with these acts, Parliament claimed the right to tax the Colonies “in all cases whatsoever”; and an

act was passed accordingly, laying duties upon all tea, glass, paper, etc., imported into the Colonies; and the money thus collected was put into the British treasury. The Colonists petitioned the king and Parliament to repeal these obnoxious laws, claiming that under a free government there should be no *taxation without representation*; that is, that no legislative body had the right to tax them, unless they had representatives of their own in that body; and they had none in Parliament. These petitions were, however, disregarded.

**8. Result**—The Colonies resisted the payment of these unjust taxes. Troops were then sent to compel submission, and the Colonists, too, began to arm. Finally, the Congress, which was a body of delegates from the several Colonies, giving up all hope of relief, declared by the Declaration of Independence, on July 4, 1776, the Colonies to be free and independent States, no longer subject to the government of Great Britain. This declaration was maintained by a war which lasted about seven years, when Great Britain gave up the contest and acknowledged the independence of the States; and the *Revolution* was accomplished. By this declaration the thirteen Colonies became thirteen States, independent not only of Great Britain, but also, in most respects, of each other.

## CHAPTER XXII

### THE CONFEDERATION

**1. Continental Congress**—As early as the year 1774, the Colonies united in the plan of a congress, to be composed of delegates chosen in all the Colonies, for



the purpose of consulting on the common good and of adopting measures of resistance to the claims of the British Government. The Continental Congress, convened in September, 1774, conducted the affairs of the country until near the close of the war. This body was in reality a revolutionary body. It had nothing to define or limit its powers. But the people relied upon the honor, wisdom, and patriotism of its members, and acquiesced in their acts.

**2. Confederation**—But it was seen from the first that the Colonies (now States, by the Declaration of Independence) ought to be united, and that a central government with clearly defined powers must be established. With a view to a permanent union the Congress, in November, 1777, agreed upon a frame of government, contained in certain articles, called “Articles of Confederation and Perpetual Union between the States.” These articles were to go into effect when they should have received the assent of all the States. But as the consent of the last State (Maryland) was not obtained until March, 1781, they went into operation only about two years before the close of the war.

**3. Defective**—As a plan of national government, the Confederation was soon found to be very defective. The union formed under it was a very imperfect one. Having been framed in time of war, it had respect to the operations of war rather than to a state of peace. Its defects appeared almost as soon as it went into effect; and after the return of peace it was found that the union, instead of being strengthened and perpetuated by it, could be preserved only by a radical change.

**4. Weakness**—The leading defect of the Confederation was its weakness. It consisted merely of a legislature, called the *Congress*, and had no executive or judicial departments. This body could do little more than recommend measures. As it could not legislate directly upon persons, its measures were to be carried into effect by the States; but the States were not in all cases willing, and some of them did at times refuse to do so, and Congress could not compel them. It belonged to Congress to determine the number of troops and the sums of money necessary to carry on the war, and to call on each State to raise its share; but Congress could not enforce its demands. It borrowed money in its own name, but it had no means of raising money to pay it. Hence we see that Congress was dependent for everything upon the good-will of thirteen independent States. It is a wonder that a government of such inherent weakness should bring the war to a successful issue. It was a sense of danger from abroad, rather than any power in the government, that induced a sufficient compliance with the ordinances of Congress to achieve the independence of the States.

**5. Taxes and Duties**—Congress had no power to levy taxes or to impose duties. These powers were reserved to the States. Even during the war the necessary means to carry it on were with difficulty collected from the States. But after the war not only was money needed for the ordinary expenses of the government, but there was a heavy debt to be paid. Duties were necessary also to regulate foreign trade, but each State imposed such as it saw fit, and there was no uniformity. Hence American commerce was

fast being destroyed through the want of power in the central government to regulate it.

**6. Discord between States**—Another of the numerous troubles which arose from this imperfect union was the want of peace and harmony between the States. Laws were enacted in some States with a view to their own interests, which operated injuriously upon other States. This induced the latter to retaliate, by passing laws partial to themselves and injurious to the former. The States soon became disaffected toward each other; and their mutual jealousies and rivalries and animosities at length became so great as to cause fears that some of the States would become involved in war among themselves, and that thus the union would be broken up.

**7. Attempts at Amendment**—In view of these difficulties, attempts were made to change the Articles of Confederation so as to give the Congress more power, especially in the matter of regulating trade; but the attempts failed.

**8. Convention of 1786**—In January, 1786, the legislature of Virginia proposed a convention of commissioners from all the States, to take into consideration the situation and trade of the United States and the necessity of a uniform system of commercial regulations. A meeting was accordingly held at Annapolis in September, 1786; but as commissioners from only five States\* attended, the commissioners deemed it unadvisable to proceed to business relating to an object in which all the States were concerned; but they united in a report to the several States and to Congress, in which they recommended the calling of a gen-

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\* New York, New Jersey, Pennsylvania, Delaware, and Virginia.

eral convention of delegates from all the States, to meet in Philadelphia in May, 1787, with a view not only to the regulation of commerce, but to such other amendments of the Articles of Confederation as were necessary to render them "adequate to the exigencies of the union."

**9. Convention of 1787**—In pursuance of this recommendation, Congress, in February, 1787, passed a resolution providing for a convention. All the States except Rhode Island appointed delegates, who met pursuant to appointment and framed the present Constitution of the United States. They also recommended it to be laid by Congress before the several States, to be by them considered and ratified in conventions of representatives of the people.

**10. Adoption of Constitution**—By this Constitution, as soon as the people of nine States ratified it, it was to go into effect as to the States so ratifying. Conventions of the people were accordingly held in all the States. The ninth State, New Hampshire, sent its ratification to Congress in July, 1788; and measures were taken by Congress to put the new government into operation. North Carolina and Rhode Island, the last States to accept the Constitution, did not send their ratifications until the year after the government was organized.

## CHAPTER XXIII

### THE UNION UNDER THE CONSTITUTION

**1. Confederacy and Nation**—The Confederation and the Union under the Constitution were each a union of the States, but they differed vastly from each

other. This difference may be best summed up by saying that the first made a Confederacy, the second a Nation.\* Under the Confederation the States, though united as States "in a firm league of friendship with each other," yet expressly "retained each its sovereignty, freedom and independence." The people were citizens of the several States rather than of a consolidated Nation. Under the Constitution the States are no longer sovereign. The Nation is above them, and they can do nothing contrary to the Constitution. They have in many respects surrendered their sovereignty to the Nation for the good of all. If they attempt to withdraw, the Nation can coerce them.† The people of the States are also citizens of the United States. We will give in the following sections the chief differences between the Confederation and the

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\* A *confederacy* is a league, or compact between individuals, whether persons or nations: a nation, as distinguished from a confederacy, is a people indissolubly bound together as a unit, a single people. One is a combination, the other a consolidation. There is another sense in which the word nation is often used, that of a people, or combination of peoples, having a common central authority, which represents them in all relations with foreign nations. The States were never known or treated by foreign powers as separate nations, and therefore in this sense the whole people were one nation even under the Confederation. Further than this, it may be said that even before the Constitution the whole people, besides being bound together by ties of common parentage and mutual dependence, often acted as a consolidated nation, a single sovereignty instead of thirteen.

† At the time of the late Civil War the Southern States claimed that the Nation was but a Confederation, and that therefore they could withdraw. This they attempted to do, and set up a government of their own, calling it the "Confederate States of America." But—if force of arms can ever settle a logical question—it is now settled that our country is not a mere Confederation, but a Nation.



present Union, which taken together make one a Confederacy and the other a Nation.

**2. Name**—The document which established the Confederation professed in its name to make nothing but a league between the States, as States, calling itself “Articles of Confederation . . . between the States.” The Constitution, on the other hand, professes to make a union of the people, and not of the States: thus its preamble reads, “We, the People of the United States . . . do ordain and establish this Constitution.”

**3. By Whom Adopted**—The Articles of Confederation were adopted by the State legislatures, acting for the States, as States; the Constitution was adopted by conventions elected by the people in the several States. By whom they were framed is of little import.

**4. Power**—But the chief difference between the two was in their power. We have seen that the Confederation had no power except to pass laws, and States and individuals could disobey them without fear of punishment, for it had no executive department to enforce, and no judicial department to judge of, its laws. But the Constitution gives the National Government all necessary powers to enforce obedience to its laws; a complete executive department, with armies and money (or the power to raise them) at its command; and also a judicial department free from State control.

**5. State Equality**—Again, under the Confederation, as in confederacies generally, the States were equal. They were entitled to an equal number of delegates in the Congress, in which they voted by States, each State having one vote; that is, if a majority of the delegates of a State voted in favor of or against a proposed measure, the vote of the State was so counted;



and a proposition having in its favor a majority of the States was carried. Under the Constitution both branches of the legislature vote *per capita*, the vote of each member counting one, and in the lower branch the representation is according to population, and thus the larger States have more members. The President, too, is elected, not by States, but by a majority vote of the Electors. (See pages 132, 170.)

**6. National Government**—The government of the Confederation, although sometimes called the National Government, was not really such, nor was it generally so regarded, as appears from the proceedings of the Convention that framed the Constitution. Early in the session of the Convention a resolution was offered, declaring "That a National Government ought to be established, consisting of a supreme legislative, judiciary, and executive." This resolution was strongly opposed by a large portion of the delegates, because it proposed to establish a *national* government. They were in favor of continuing the Confederation with a slight enlargement of the powers of Congress, so as to give that body the power to lay and collect taxes and to regulate commerce. But the friends of a national government prevailed; and history has proved their wisdom.

**7. Federal Union**—But although the present government, with its three departments, its powers, and its supremacy over the States, is properly a national government, yet it is not wholly such, but partly national and partly federal; some of the federal features of the Confederation having been retained in the Constitution, as will appear on a further examination of this instrument. Hence the Union is still called,

with propriety, the *Federal Union*, and the government the *Federal Government*.

## CHAPTER XXIV

### CONSTITUTION OF THE UNITED STATES

[NOTE.—The following is the text of the Constitution and Amendments. It should be studied until the pupil can give the subject and substance of each paragraph. The titles of the articles and sections form no part of the document, but are added here for the purpose of convenience in reference. The large numbers at the left are placed there that the paragraphs may be referred to by number in the rest of the book.]

#### PREAMBLE

- 1 WE, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

#### ARTICLE I

##### LEGISLATIVE DEPARTMENT

##### Section 1. Division into Two Houses

- 2 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

##### Section 2. House of Representatives

- 3 1. The House of Representatives shall be composed of members chosen every second year by the people of the several States ; and the electors in each State shall have the

qualifications requisite for electors of the most numerous branch of the State Legislature.

4 2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

5 3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative ; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose *three* ; Massachusetts, *eight* ; Rhode Island and Providence Plantations, *one* ; Connecticut, *five* ; New York, *six* ; New Jersey, *four* ; Pennsylvania, *eight* ; Delaware, *one* ; Maryland, *six* ; Virginia, *ten* ; North Carolina, *five* ; South Carolina, *five* ; and Georgia, *three*.

6 4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

7 5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

### Section 3. Senate

8 1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature

thereof, for six years ; and each Senator shall have one vote.

**9** 2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year ; of the second class at the expiration of the fourth year ; and of the third class at the expiration of the sixth year ; so that one third may be chosen every second year ; and if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments, until the next meeting of the Legislature, which shall then fill such vacancies.

**10** 3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

**11** 4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

**12** 5. The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

**13** 6. The Senate shall have the sole power to try all impeachments : when sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief-Justice shall preside ; and no person shall be convicted without the concurrence of two-thirds of the members present.

**14** 7. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under

the United States ; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment, according to law.

#### Section 4. Elections and Meetings of Congress

- 15** 1. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof ; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.
- 16** 2. The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

#### Section 5. Powers and Duties of the Houses

- 17** 1. Each House shall be the judge of the elections, returns, and qualifications of its own members ; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.
- 18** 2. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.
- 19** 3. Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.
- 20** 4. Neither House, during the session of Congress, shall,

without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

### **Section 6. Privileges of and Prohibitions upon Members**

- 21** 1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.
- 22** 2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

### **Section 7. Revenue Bills: President's Veto**

- 23** 1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose, or concur with, amendments, as on other bills.
- 24** 2. Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their



journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and, if approved by two-thirds of that House, it shall become a law. But, in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bills shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

- 25     3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States, and before the same shall take effect shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

### Section 8. Legislative Powers of Congress

The Congress shall have power :

- 26     1. To lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States:
- 27     2. To borrow money on the credit of the United States:
- 28     3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes:
- 29     4. To establish a uniform rule of naturalization, and uni-

form laws on the subject of bankruptcies throughout the United States:

- 30** 5. To coin money; to regulate the value thereof, and of foreign coin; and fix the standard of weights and measures:
- 31** 6. To provide for the punishment of counterfeiting the securities and current coin of the United States:
- 32** 7. To establish post-offices and post-roads:
- 33** 8. To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:
- 34** 9. To constitute tribunals inferior to the Supreme Court:
- 35** 10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:
- 36** 11. To declare war; grant letters of marque and reprisal; and make rules concerning captures on land and water:
- 37** 12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:
- 38** 13. To provide and maintain a navy:
- 39** 14. To make rules for the government and regulation of the land and naval forces:
- 40** 15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:
- 41** 16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress :
- 42** 17. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same

shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: And

- 43** 18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

### Section 9. Prohibitions upon the United States

- 44** 1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

- 45** 2. The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it.

- 46** 3. No bill of attainder or ex post facto law shall be passed.

- 47** 4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

- 48** 5. No tax or duty shall be laid on articles exported from any State. No preference shall be given, by any regulation of commerce or revenue, to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

- 49** 6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

- 50** 7. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, ac-

cept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign State.

### Section 10. Prohibitions upon the States

**51** 1. No State shall enter into any treaty, alliance, or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit ; make anything but gold and silver coin a tender in payment of debts ; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts ; or grant any title of nobility.

**52** 2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws ; and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States ; and all such laws shall be subject to the revision and control of the Congress. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.

## ARTICLE II

### EXECUTIVE DEPARTMENT: THE PRESIDENT AND VICE-PRESIDENT

#### Section 1. Term: Election: Qualifications: Salary: Oath of Office

**53** 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

**54** 2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress ; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector.

The following clause has been superseded by Article XII. of the Amendments :

**55** 3. The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed, and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President ; and if no person have a majority, then, from the five highest on the list, the said House shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote ; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice-President.

**56** 4. The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

**57** 5. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President ; neither

shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

**58** 6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President ; and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

**59** 7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected ; and he shall not receive, within that period, any other emolument from the United States, or any of them.

**60** 8. Before he enter on the execution of his office, he shall take the following oath or affirmation :

“I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States ; and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States.”

## Section 2. President's Executive Powers

**61** 1. The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States ; he may require the opinion, in writing, of the principal officer in each of the executive Departments, upon any subject relating to the duties of their respective offices ; and he shall have power to grant reprieves and



pardons for offences against the United States, except in cases of impeachment.

**62** 2. He shall have power by and with the advice and consent of the Senate to make treaties, provided two thirds of the Senators present concur ; and he shall nominate, and by and with the advice and consent of the Senate shall appoint, ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law ; but the Congress may, by law, vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the Heads of Departments.

**63** 3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

### Section 3. President's Executive Powers

(continued)

**64** 1. He shall from time to time give to the Congress information of the state of the Union ; and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both Houses, or either of them ; and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed ; and shall commission all the officers of the United States.

### Section 4. Impeachment

**65** 1. The President, Vice-President, and all civil officers of the United States shall be removed from office on impeach-

ment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

## ARTICLE III

### JUDICIAL DEPARTMENT

#### Section 1. Courts : Terms of Office

- 66** 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may, from time to time, ordain and establish. The judges both of the Supreme and inferior Courts shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

#### Section 2. Jurisdiction

- 67** 1. The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party, to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign States, citizens, or subjects.
- 68** 2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with

such exceptions, and under such regulations, as the Congress shall make.

- 69** 3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed ; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

### Section 3. Treason

- 70** 1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

- 71** 2. The Congress shall have power to declare the punishment of treason ; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

## ARTICLE IV

### RELATIONS OF STATES

#### Section 1. Public Records

- 72** 1. Full faith and credit shall be given, in each State, to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

#### Section 2. Rights in one State of Citizens of another

- 73** 1. The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.

- 74** 2. A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.
- 75** 3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor ; but shall be delivered up on claim of the party to whom such service or labor may be due.

### **Section 3. New States: Territories**

- 76** 1. New States may be admitted by the Congress into this Union ; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.
- 77** 2. The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States ; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

### **Section 4. Protection afforded to States by the Nation**

- 78** 1. The United States shall guarantee to every State in this Union a republican form of government ; and shall protect each of them against invasion, and on application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence.

## ARTICLE V

## AMENDMENT

- 79** The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two thirds of the several States, shall call a convention for proposing amendments ; which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress : provided, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article ; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

## ARTICLE VI

## NATIONAL DEBTS : SUPREMACY OF NATIONAL LAW : OATH

- 80** 1. All debts contracted, and engagements entered into, before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the Confederation.
- 81** 2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.
- 82** 3. The Senators and Representatives before mentioned,

and the members of the several Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

## ARTICLE VII

### ESTABLISHMENT OF CONSTITUTION

- 83** The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

[Constitution ratified by States, 1787-1790.]

## AMENDMENTS

### ARTICLE I

#### FREEDOM OF RELIGION, OF SPEECH, AND OF THE PRESS : RIGHT OF PETITION

- 84** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ; or abridging the freedom of speech or of the press ; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

[Adopted 1791.]

### ARTICLE II

#### RIGHT TO KEEP ARMS

- 85** A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

[Adopted 1791.]



## ARTICLE III

## QUARTERING OF SOLDIERS IN PRIVATE HOUSES

- 86** No soldier shall, in time of peace, be quartered in any house without the consent of the owner ; nor in a time of war, but in a manner to be prescribed by law.

[Adopted 1791.]

## ARTICLE IV

## SEARCH WARRANTS

- 87** The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

[Adopted 1791.]

## ARTICLE V

## CRIMINAL PROCEEDINGS

- 88** No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger ; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb, nor shall be compelled, in any criminal case, to be a witness against himself ; nor be deprived of life, liberty, or property without due process of law ; nor shall private property be taken for public use without just compensation.

[Adopted 1791.]

## ARTICLE VI

## CRIMINAL PROCEEDINGS

- 89** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him ; to have compulsory process for obtaining witnesses in his favor ; and to have the assistance of counsel for his defence.

[Adopted 1791.]

## ARTICLE VII

## JURY TRIAL IN CIVIL CASES

- 90** In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

[Adopted 1791.]

## ARTICLE VIII

## EXCESSIVE PUNISHMENTS

- 91** Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[Adopted 1791.]

## ARTICLE IX

## RIGHTS OF PEOPLE NOT NAMED

- 92** The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

[Adopted 1791.]

## ARTICLE X

## POWERS RESERVED TO STATES

- 93** The powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

[Adopted 1791.]

## ARTICLE XI

## SUITS AGAINST STATES

- 94** The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

[Adopted 1798.]

## ARTICLE XII

## ELECTION OF PRESIDENT AND VICE-PRESIDENT

- 95** 1. The Electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom at least shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate;—the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the

votes shall then be counted;—the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the Representatives from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

**96** 2. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of Electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

**97** 3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

[Adopted 1804.]

## ARTICLE XIII

## SLAVERY

## Section 1. Abolition of Slavery

- 98 Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

## Section 2. Power of Congress

Congress shall have power to enforce this article by appropriate legislation.

[Adopted 1865.]

## ARTICLE XIV

CIVIL RIGHTS : APPORTIONMENT OF REPRESENTATIVES :  
POLITICAL DISABILITIES : PUBLIC DEBT

## Section 1. Civil Rights

- 99 All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

## Section 2. Apportionment of Representatives

- 100 Representatives shall be apportioned among the several States according to their respective numbers, counting the

whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

### Section 3. Political Disabilities

**101** No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States; or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

### Section 4. Public Debt

**102** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obliga-



tion incurred in aid of insurrection or rebellion against the United States, or any claim for loss or emancipation of any slave ; but all such debts, obligations, and claims shall be held illegal and void.

### **Section 5. Power of Congress**

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

[Adopted 1868.]

## **ARTICLE XV**

### **RIGHT OF SUFFRAGE**

#### **Section 1. Right of Negro to Vote**

103

The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

#### **Section 2. Power of Congress**

The Congress shall have power to enforce this article by appropriate legislation.

[Adopted 1870.]

# SUBJECT ANALYSIS

## I. CONSTITUTION

### I. LEGISLATIVE DEPARTMENT; [Art. I.]

#### I. Its Composition ;

- 1. Division into Two Houses. [Sec. 1.]
- 2. House of Representatives. [Sec. 2.]
- 3. Senate. [Sec. 3.]

#### II. Legislative Regulations ;

- 1. Elections and Meetings. [Sec. 4.]
- 2. Powers and Duties. [Sec. 5.]  
(Except law-making powers.)
- 3. Privileges of and Prohibitions upon Members.  
[Sec. 6.]

#### III. President's Veto Power. [Sec. 7.]

#### IV. Legislative Powers of Congress. [Sec. 8.]

#### V. Prohibitions upon the United States. [Sec. 9.]

#### VI. Prohibitions upon the States.\* [Sec. 10.]

### II. EXECUTIVE DEPARTMENT—President and Vice-President ; [Art. II.]

- 1. (1) Term, (2) Election, (3) Qualifications, (4) Salary,  
(5) Oath. [Sec. 1.]
- 2. President's Executive Powers. [Secs. 2 and 3.]
- 3. Subject to Impeachment. [Sec. 4.]

### III. JUDICIAL DEPARTMENT; [Art. III.]

- 1. (1) Courts, (2) Term of Office, (3) Salary. [Sec. 1.]
- 2. Jurisdiction. [Sec. 2.]
- 3. Treason. [Sec. 3.]

\* This logically does not belong to the division "The National Government," but to "Miscellaneous Provisions," but it is thought best to retain the order of the

<b>MISCELLANEOUS PROVISIONS</b>	{	<b>I. RELATIONS OF STATES; [Art. IV.]</b>
		<div style="display: flex; align-items: center;"> <div style="font-size: 3em; margin-right: 10px;">{</div> <div> 1. Records of one State in another. [Sec. 1.]  2. Rights in one State of Citizens of another. [Sec. 2.]  3. (1) New States, (2) U. S. Territory. [Sec. 3.]  4. Protection of States by Nation. [Sec. 4.] </div> </div>
		<b>II. AMENDMENT. [Art. V.]</b>
		<b>III. (1) NATIONAL DEBT; (2) NATIONAL SUPREMACY; (3) OATH. [Art. VI.]</b>
		<b>IV. ESTABLISHMENT OF CONSTITUTION. [Art. VII.]</b>

## II. AMENDMENTS

1. Arts. I.-VIII. Prohibitions on Congress as to Personal Rights.
2. Arts. IX. and X. Rights not named in Constitution.
3. Art. XI. Judicial Jurisdiction.
4. Art. XII. Election of President and Vice-President.
5. Art. XIII. Abolition of Slavery.
6. Art. XIV. (1) Equal Civil Rights, (2) Apportionment of Representatives, (3) Political Disabilities, (4) Public Debt.
7. Art. XV. Right of Suffrage.

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Constitution itself. There are some other cases where the true logical order is not followed in the Constitution. The provisions regarding the choosing of officers and impeachment in sections 2 and 3 of Article I. would more properly come in section 5, as they relate to certain powers of the Houses. That regarding revenue bills in section 7 would properly fall in the following section, as it relates to the law-making powers of Congress.

## SECTION II.—LEGISLATIVE DEPARTMENT

## CHAPTER XXV

## HOUSE OF REPRESENTATIVES

**1. Preamble**—The preamble is an important part of the Constitution. The object of the Constitution was to remedy the defects existing under the Confederation, and some of the clauses of the preamble refer to those defects (1).<sup>\*</sup> We have seen that the Union then was a very imperfect one. Instead of there being “domestic tranquillity,” the States were continually quarrelling. It was impossible to “provide for the common defence” of the country against foreign enemies, or to “promote the general welfare” by broad measures, unless there were a strong central government. Had the Constitution not been adopted and had the States remained independent, it is not probable that the country would have had the unexampled prosperity that it has.

**2. Congress**—This is the name of the national legislative body, and like the State legislatures it is divided into two Houses, called the Senate and House of Representatives (2). The former represents the States, and the latter the people. The members of the House,<sup>†</sup> called Representatives, are elected by the people of the States every second year (3). Members

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<sup>\*</sup> These numbers refer to the paragraphs of the Constitution. The pupil should turn back to it at each reference.

<sup>†</sup> The House of Representatives is frequently called simply the “House” when spoken of in connection with the Senate.

of the Congress under the Confederation were appointed by the State legislatures, and for one year.

**3. Electors**—There was much discussion and difference of opinion in the Convention as to what should be the qualifications of the voters who should elect the Representatives. The qualifications of electors were various in the different States. In some of them owners of property, or tax-payers, in others freeholders\* only, were voters. In some, only the latter voted for the higher officers; in a few, suffrage was almost universal. Finally, as a compromise, it was decided that the qualifications should be the same in each State as those requisite for electors of its lower house, as it was presumed no State would object to such a rule (3).

**4. Qualifications**—A Representative must be twenty-five years of age, must have been a citizen seven years, and must live in the State from which he is chosen (4). The reasons for this will be readily understood. If voters must have certain qualifications, surely those who make laws for them should have higher ones. (See Chap. V.)

**5. Number**—The Constitution does not limit the House to any definite number of Representatives; it only declares that the number shall not exceed one for every 30,000 inhabitants. Otherwise it might become too large. It requires an enumeration of the inhabitants every ten years; and the next Congress thereafter determines the ratio of representation† and the

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\* A freeholder is one owning land, either absolutely or during his own or another's life.

† The word *ratio* signifies rate, or proportion. It here means the number or portion of the inhabitants entitled to a Representative.

number of Representatives, and apports them among the States (5).

**6. Present Number**—The first House of Representatives consisted of sixty-five members, and the ratio was about one to every 50,000 inhabitants. Since then, as the population has increased, Congress has increased the ratio, in order that the House might not grow too large to transact business; but in spite of that the House has grown, until now (1894) it consists of three hundred and fifty-six members, being about one for every 173,900.

**7. Every State Represented**—But it may happen (and has happened) that some States have not a population equal to the ratio. In view of this the Constitution provides that no State shall lose its representation in the House, by declaring that each State shall have at least one Representative (5).

**8. Apportionment**—With regard to how many Representatives the different States should have, the Convention found it difficult to agree. In the Congress under the Confederation, it will be remembered, the States were entitled to an equal number of delegates, and each State had one vote. But now it was proposed to apportion the Representatives according to population. On this point there were two causes of contention. First: The small States opposed it, because it gave them fewer Representatives, and therefore less power in Congress. The large States insisted on it, saying that they ought to have greater power because they had greater interests. Finally the small States yielded with regard to the House of Representatives. Second: The slaveholding (Southern) States claimed that, in reckoning the population for the pur-



pose of apportioning Representatives, slaves should be included ; the non-slaveholding (Northern) States \* insisted that only free persons should be included, as the slaves could not vote themselves, and it was unjust to give the free persons extra votes simply because they owned certain property—that being what slaves were considered. The controversy on this point rose so high, and the parties were for a long time so unyielding, that fears were entertained of a sudden dissolution of the Convention.

**9. Result**—The result was a compromise. The Northern States finally consented that three-fifths of the slaves [the words “all other persons” in section 2 (5) mean slaves] should be counted, and the Southern States consented that direct taxes should be laid on the same basis ; so that the Southern States would have the larger share of Representatives, but would pay the larger share of direct taxes.† But, as it resulted, the advantage, contrary to anticipation, was almost wholly on the side of the Southern States, for very few direct taxes were laid before the late Civil War, and thus they obtained the increased represen-

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\* Slavery then existed in all the States except Massachusetts ; but as there were very few slaves in the Northern States, they are generally spoken of as if they were at that time non-slaveholding States.

† To illustrate this rule by an example : Suppose a State contained 600,000 free persons and 500,000 slaves. Adding three-fifths of the number of slaves (300,000) to the number of free persons gives 900,000 as the number of the representative population : and the State would have been entitled to *three* Representatives for every *two* that a State which contained 600,000 free inhabitants and no slaves would have. So in apportioning taxes according to population, the State in the case we have supposed would have been obliged to raise *three* dollars for every *two* that it would have been obliged to raise if no slaves had been counted.

tation without the corresponding increase in taxation.

**10. Present Rule**—The state of things described in the last section with regard to apportionment existed up to the Civil War. The 13th, 14th, and 15th Amendments changed the system. Now Representatives are apportioned in proportion to the total population, whether white or black (100).\*

**11. Territories**—By an act of Congress, every Territory in which a government has been established is entitled to send a delegate to Congress, who has a right to take part in the debates of the House, but not the right of voting there.

## CHAPTER XXVI

### SENATE

**1. Reasons for Two Houses**—In this country and in England it is thought best that the legislative body should consist of two houses. If there were only one house it might pass some very harmful or unjust laws, either through undue haste, ignorance, popular excitement, or the undue influence of popular but mistaken leaders. But if there were another house, it would be improbable that the very same influences should exist in both, and thus one house would correct the hasty legislation of the other. And if one house were of a higher grade than the other, composed of wiser men, it is seen that its restrictive influence would be of the greater value.

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\* The number of Indians not taxed is so small that it need not be considered.

**2. Character of Senate**—For these reasons the Constitution has established the Senate, and has made it a body of greater dignity than the House of Representatives. The causes which make the Senate the more select body are four in number: (1) It has fewer members; (2) they are elected by the State legislatures instead of by the people; (3) the term of office is longer; and (4) the qualifications are higher.

**3. State Equality**—In the Senate the States are equal in power, each having two members (8). The Convention readily agreed upon dividing Congress into two branches; but, as has been observed, it was difficult to settle the mode of representation. The delegates from the large States insisted upon a representation in proportion to population, in the Senate as well as in the House; and the small States contended for equality in both branches. The debate was long and animated; and it became apparent that, as in the case of slave representation in the House, there must be a compromise. This was at length effected; the small States consenting to a proportional representation in the House, and the large States to an equal representation in the Senate.\* Thus while the House represents the people, the Senate represents the States, and this is one instance in which the federation principle is retained. (See page 103, sec. 7.)

**4. Voting**—In the Congress under the Confederation the voting was by States, but the Senate differs

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\* It will be noticed that in the Convention which framed the Constitution there were many opposing interests, and that compromises were frequently necessary, each State giving up something. It was a spirit of patriotism which caused this, as well as the instinct of self-preservation, for without compromise no permanent union could have been formed, saving the rights of all.

in that respect. There the Senators vote separately, the vote of each Senator counting one, as in the House; and a question is decided by the united votes of a majority of the members, and not by the vote of a majority of the States (8).

**5. Term**—The period of six years was also the result of a compromise in the Convention (8). The terms proposed varied from three to nine years, or even longer. One object in making it longer than a Representative's term was to obtain a body of men wiser and more experienced than the House would contain. Where a man is to be elected for a long term, greater care will be used in selecting him. A second object was to obtain independence of popular impulses. The Representatives were to reflect the will of the people, and so it was provided that they might be often changed: but the Senators were to serve as a check upon hasty action by the people's representatives, and for this purpose they must feel independent of the people to a certain degree. A long term tends to give this independence. A third object was to check frequent changes in the laws. The oftener a legislature is changed the more changeable and uncertain will be the laws; and uncertainty and change often do more injury than evil laws.

**6. Gradual Change**—Senators are not all elected at the same time. One-third go out of office every two years (9). In favor of this arrangement are two important considerations. First: It secures to the public at all times the benefit of the experience of at least two-thirds of the body. Whereas, if the terms of all the Senators expired at once, their places might be supplied mainly by new members without the requi-

site knowledge and experience. Second: While a long term is intended to guard against the too frequent changes in the laws, it may also prevent, for too long a time, the amendment or the repeal of bad laws. Such amendment or repeal may be hastened by the election of new members in the place of the one-third who retire every two years.

**7. Qualifications**—Why these are higher than in the case of Representatives has been explained (see sec. 2). An additional reason for requiring them to have been citizens of the United States nine years is found in the fact that, with the President, they make treaties with foreign nations (62). A Senator should therefore have lived here long enough to have become free from bias in favor of his native country.

## CHAPTER XXVII

### GENERAL LEGISLATIVE REGULATIONS \*

**1. Choice of Officers**—It is considered important in legislative bodies that each house should have the choice of its own officers, in order that it may have proper control of them. A Speaker not responsible to the House of Representatives (*e.g.*, if appointed by the President) might baffle the will of the entire House. One exception to this rule is that the Vice-President presides in the Senate. The States follow this by having the Lieutenant-Governor preside in the State Senate (7, 12).

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\* Most of the provisions contained in sections 4, 5, 6, and 7 of Article I. will be easily understood, and many of them are similar to provisions in the State constitutions. We will speak only of a few which require some explanation.



**2. Impeachment**—Impeachment and its trial have been described before (see page 82). As in the State legislatures, so in Congress, the lower House impeaches and the upper House tries. The officers subject to impeachment by the national House of Representatives are the President, Vice-President, and all civil officers of the United States (not of any State) (65). This means all members of the civil (*i.e.*, not military), executive, and judicial departments of the nation. Thus neither members of Congress nor of the army or navy can be removed in this way. In practice only officials of the highest rank are ever impeached.

**3. Meetings of Congress**—Congress meets every year, in December (16). But as every second year the entire House of Representatives and one-third of the Senate are elected anew, the two sessions following an election are classed together and called "A Congress." The meeting of Congress in December, 1893, was the first session of the 53d Congress.

**4. Rules**—Like State legislatures, each House of Congress has its rules, which in most cases are strictly followed. A bill is introduced, referred to its appropriate committee, reported by the committee, read, debated, and passed (or rejected), in substantially the same manner as in State legislatures (see page 44). But at any time either House may set aside all its rules, and pass laws in any manner it sees fit, provided no provision of the Constitution is violated.

**5. Salary**—In the Convention there was much discussion as to whether it would be wise to allow salaries to members of Congress. On the one hand it was said salaries would tempt unworthy men to intrigue for an election; on the other hand, the worthiest men



might be shut out through poverty if no compensation were allowed. It was decided to allow compensation. The amount is fixed by Congress itself (21).

**6. Arrest of Members**—Members of Congress (except in certain cases) cannot be arrested when Congress is in session (21). This is in order that the people who elect them may not be deprived of their services.

**7. Liberty of Speech**—The clause which says that a member "shall not be questioned in any other place" for any speech, means that he shall not be sued, either civilly or criminally, for anything he says in debate (21). This is in order that members may feel the fullest freedom and independence.

**8. Revenue Bills**—These are bills for raising money for the government, either by direct or indirect taxation. All other laws may originate in either House, but these must be passed by the House of Representatives first (23). The reason for this is that since the people pay the taxes, it is appropriate that the Representatives elected directly by them should propose all such laws.

**9. Veto**—But a bill having passed both Houses is not yet a law. It must be presented to the President, who is thus a part of the legislative department. There are three ways in which a bill, after having passed both Houses, may become a law: (1) it may be signed by the President; (2) he may neglect to sign it for ten days; and (3) he may return it to Congress within ten days, and each House may pass it a second time by a two-thirds vote (24, 25).

## CHAPTER XXVIII

## POWERS OF TAXATION

**1. Nature of the National Government**—Before treating of the several legislative powers we will first speak of a certain characteristic of the General Government in which it differs from the States, and which must be always kept in mind when considering its law-making powers. The United States Government is a government of *delegated* powers; that is, powers which have been *delegated* to it by the States, or the people of the States. It has only such powers as the People have given it, in the Constitution. Hence it is called a government of *limited* powers. The States, on the other hand, existing before the General Government, and possessing entire sovereignty, at least in theory, may exercise all powers which they have not surrendered to the General Government. In other words, their powers are *unlimited*, except so far as they have parted with any of their original powers. Therefore, when the question arises whether the President or Congress have certain powers, we look in the Constitution, and if they are not there granted, they do not exist. But when the question arises, with regard to a State, whether its people have a certain power, we approach it from the other side and say they have the power unless the United States Constitution has received it. Most of the legislative powers of Congress are enumerated in Article I., section 8. The first one grants the power to tax (26).

**2. Necessity for the Taxing Power**—This is one of

the most important powers of government. A government without the power to raise money hardly deserves the name. Without money it would have no power to enforce obedience to its laws, for it could not pay soldiers or civil officers, and men will not serve without pay. We have seen how the Confederation tried the experiment and failed.\* This was one of its errors, corrected in the Constitution.

**3. Manner of Taxation**—Taxes† may be laid by the General Government in three ways: (1) upon persons directly, as poll or property taxes; (2) upon goods when they are imported into the country from abroad; or (3) upon goods when they are manufactured and used here. This clause (26) would also grant the power to lay export duties—that is, duties to be paid

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\* See page 98.

† The four words, *taxes*, *duties*, *imposts*, and *excises*, are not used to mean four different things, but only to cover all the usual methods of taxation. These words have not fixed meanings. Some of them have different meanings in different connections. At times some have the same meaning as others. Their most usual meanings when used in connection with one another are perhaps these: *taxes*, direct taxes laid on individuals, either as poll taxes, or taxes in proportion to property (see Chap. XV. for distinction between direct and indirect taxes); *duties*, indirect taxes of all kinds, including taxes on exports, imports, and excises; *imposts*, duties on imports; *excises*, duties on goods manufactured and used here. Another word, *customs*, usually means duties on imports and exports, but in this country, since there are no export duties, it usually means the same as *imposts*.

Duties are *specific* and *ad valorem*. A *specific* duty is a specified sum of money charged upon every yard, pound, or gallon of any commodity. Thus, a duty of ten cents on a pound of tea, or of one dollar on a yard of cloth, or of fifty cents on a gallon of wine, is a specific duty. *Ad valorem* is a Latin phrase, signifying *according to the value*. An *ad valorem* duty is a certain *percentage* on the value or price.

on goods when sent from this to foreign countries—did not a later provision forbid it (48).

**4. Objects**—The objects for which taxes may be laid are also enumerated in the same clause (26). Since it is the theory of the Constitution that Congress shall have power over only those matters which affect the whole country, leaving all local matters to the States, so no tax can be laid except for some purpose of interest to all the people of the Nation. But the phrase “general welfare” is very broad.

**5. Uniformity**—The Constitution is careful to provide that no State shall pay more than its just share of taxes. There are several provisions regulating this. First, direct taxes must be laid in proportion to population (5); second, all indirect taxes which may be laid (*i.e.*, imposts and excises) must be uniform throughout the country (26); third, no export duties can be laid (48). The reasons for the last provision are that a tariff\* of export duties which would bear equally on the States would be very difficult to make, since they do not export the same articles, some exporting cotton, others grain, and others manufactures, and that it would constitute a constant cause of irritation between the States. For instance, the Representatives of the cotton and grain States might combine and pass a law laying very low duties on cotton and grain and high ones on manufactures.

**6. Taxes which have been laid**—Up to the late Civil War very few direct taxes had been laid by the National Government. They were then laid for a few years, but now (1894) there are none. Some excise duties have been and are now laid, chiefly on liquors

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\* A *tariff* means a list of duties laid.

and tobacco, articles that are not necessary to the people, but are luxuries. During the Civil War the excise duties collected were about equal to the customs. But from the beginning very many duties on imports have been laid, and it is from this source that most of the revenue has been raised.

**7. Power to Borrow Money**—This is given to Congress for the reasons already described, which justify State debts (page 74, sec. 7) (27). This power was exercised during the war until the national debt nearly reached the sum of \$3,000,000,000. Without this power the government would have been almost helpless, for its regular income would have been wholly inadequate.

## CHAPTER XXIX

### POWER TO REGULATE COMMERCE (28)

**1. Why given to Congress**—This was for two reasons: (1) because it was a matter of general and universal interest, and (2) because of the benefits that would flow from uniformity. The need of no power was more deeply felt under the Confederation than the power to regulate foreign trade. We thus see that the power to lay duties comes from two clauses. One (26) gives Congress the power, but only for purposes of revenue. If none should be needed for that purpose, or if the duties laid for revenue were not sufficient to regulate commerce, they might be laid under the other clause (28) to any amount.

**2. Nature of Regulation**—This regulation is of two kinds: (1) the laying of duties on goods imported from



abroad, for the purpose of protecting the commercial interests of this country; and (2) making regulations which shall tend to render navigation less dangerous. The manner and object of regulating commerce by means of import duties will be seen if we consider the trade of England and America as it was after the Revolution.

**3. Retaliatory Duties**—England pursued the policy, for her own benefit, of laying heavy duties on merchandise imported there from this country. That injured us, and so, in order to compel her to abandon the policy, we wished to lay duties on articles sent here by the English merchants.\* Under the Confederation this was attempted, but as each State could lay what duties it chose, there was no uniformity, and each would try to secure the trade by laying lower duties than the rest. So the Constitution gave Congress exclusive authority over the whole subject, and retaliatory duties were laid.

**4. Protection**—Another way in which it was

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\* The effect of these duties may not be quite clear: Suppose the market value of a bushel of wheat in Great Britain to be \$1, and the cost of raising the article here and carrying it there to be (together) \$1. We can then raise it here and sell it there along with the English producer. If now a duty of 40 cents a bushel is laid upon wheat from abroad, we cannot sell it for less than \$1.40, and the English consumer, instead of buying it with this duty added, will buy of the English producer. But, the people of this country being then chiefly agricultural, more wheat was produced here than there was a market for, and the American farmer was dependent on the foreign markets. Being shut out of the English market, the value of our products fell, and we suffered loss. It was thought then that if we retaliated and laid duties on manufactured articles (of which England sent us a great number), and so shut them out, she would be influenced to abandon her duties.



thought duties on imports would protect the commercial interests of the country was in encouraging and protecting the manufacturing interests.\* This theory is called *protection*, and is the policy which the country has followed. High protective duties have been laid almost from the beginning, on articles manufactured from cotton, wool, and iron.

**5. Free Trade**—But it is believed by many that protection is a mistaken policy, at least in this country at present, and that while it encourages manufactures it injures some other interests. The opposing policy is called *free trade*. Its supporters urge that if the yard of cloth can be brought here and sold for less than it can be made here, the people who pay for it lose by shutting it out, and the few manufacturers are the only ones who gain.† The British Government now acts on the policy of free trade.

**6. Collection of Duties**—Certain places on the coast are designated by the laws of Congress, called

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\* Suppose foreign cloth of a certain quality is sold in this country for \$2.50 a yard, and cloth of the same quality manufactured here cannot be made for less than \$3 a yard. There would now be no encouragement to any one to engage in the manufacture of such cloth, because, in order to sell it, he must reduce the price to that of the foreign article, which would subject him to a loss of 50 cents a yard. Let now a duty of \$1 a yard be laid upon the foreign cloth, and the price would be \$3.50, and preference would be given to the domestic article, unless the importer should reduce the price of his foreign cloth to \$3; in which case, it is to be presumed, about an equal quantity of each would be consumed, and the duty of \$1 a yard on the foreign cloth would go into the United States Treasury.

† The question of free trade or protection belongs to the science of Political Economy; and it is therefore necessary in a work of this character only to refer to the matter and not attempt to give the arguments used in support of either policy.

*ports of entry*, and a vessel must first come to one of these, where the master delivers a statement of the cargo to an officer, appointed by the President, called a *collector of customs*. The cargo is then examined, and the duties calculated and paid to the collector. If not paid the collector seizes the goods, which are forfeited to the government.

**7. Registry**—Another regulation of commerce is that by which a vessel built and owned in this country may be *registered* on the collector's books as an American vessel. As such it has certain privileges which foreign vessels do not have. A foreign vessel is not allowed to engage in the coast trade here. An American vessel, registered, is in all places entitled to the full protection of our government, and if it is taken or injured by foreigners in foreign waters, the United States Government must demand reparation from the government to which they belong.

**8. Clearance and Entry**—Every time a vessel (foreign or domestic) leaves a port, what is called a *clearance* must be obtained. This is a certificate by the collector that all the fees upon the vessel have been paid, and the law been complied with in all respects. So when a vessel arrives at a port, the master must report its arrival to the collector of the port, deliver up a statement of its cargo and the clearance he received at the port from which he came. This is called *entering* the vessel.\*

**9. Navigation Laws**—Coming now to the second class of regulations of commerce, Congress has passed many laws to render navigation less dangerous. The

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\* In the coasting trade between ports of the United States, clearance and entry are not required, in general.

following are some of the subjects: providing for light-houses, buoys, signal stations, and life-saving stations along the coast; improving harbors; requiring vessels to take licensed pilots when near the coast; prescribing how many passengers and what provisions shall be carried; quarantine;\* and many similar ones.

**10. Commerce with Indians**—In granting to Congress the power to regulate commerce† “with the Indian tribes,” it was intended to lessen the dangers of war. Murders and war had been provoked by the improper conduct of some of the States. It was believed that by a uniform policy difficulties would be more likely to be prevented. This was more important then than now, when the number of Indians has become so insignificant.

## CHAPTER XXX

### OTHER POWERS RELATING TO PEACE

**1. Citizens and Aliens**—The general distinction between them is this: *citizens* are those born in this country;‡ *aliens* are those born in a foreign country, whether living here or in the foreign country. Both

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\* This means a period of time for which vessels are detained before entering a port, so that they may be examined to see if there is any malignant disease on board. Quarantines are required by the health laws of the States; and by the laws of Congress vessels are to be subject to the health laws of the State at whose ports they arrive.

† Commerce, in a broad sense, as used in this clause of the Constitution, means not only trade by sea and land, but all intercourse.

‡ Prior to the Civil War white people alone were citizens in the Southern States, but now under the 14th Amendment white and black stand on the same basis (99).

Children take the citizenship of their parents.

include men, women, and children. But after living here a certain time an alien may become a citizen. Aliens have not all the rights of citizens. They cannot vote (see page 27).<sup>\*</sup> In many States they have not full power to own real estate. In general, they are considered subjects of the nation from which they come, and not of this.

**2. Naturalization**—But to deny foreigners the rights of citizens after they shall have acquired a fixed residence here, and a knowledge of their civil and political duties, would be illiberal and unjust. The process by which an alien may become a citizen is called *naturalization*. Congress has the power to make a uniform rule (29). The reason for this is that if it were left to the States, a person having become naturalized in one State might, on removing into another, be deprived of the rights of citizenship until he should have been naturalized by the laws of such State. Besides, by the Constitution a citizen of any State is entitled to the privileges of a citizen in any other State (73). Now, after a person is once naturalized, he is a citizen of the United States and also of the State in which he resides at the time (99). By removing to another he becomes a citizen of that.

**3. When Allowed**—The laws of Congress prescribe that an alien may be naturalized after living in this country five years. The first step is to declare on

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<sup>\*</sup> Naturalization and the right to vote are two separate matters, which must not be confused. Not all of those who are naturalized are given the right to vote (*e.g.*, women and children). Although most States do give foreigners the right to vote, when naturalized, still they need not; and some States even allow some aliens to vote. The State regulates voting, the United States naturalization.

oath before a court that it is his intention to become a citizen. This declaration he may make as soon as he arrives, or at any time. After the declaration he must wait two years. After that, the court, if satisfied that he has resided five years in the United States, and one year in the State in which the court is held, may admit him as a citizen. He then, before the court, renounces his allegiance to his old country, and swears to support the Constitution of the United States. But no alien can be compelled to become a citizen against his will.

**4. Bankrupt Laws**—A *bankrupt* is an insolvent debtor; that is, a person who is unable to pay all his just debts. A *bankrupt law* is a law which, upon an insolvent's giving up all his property to his creditors, discharges him from the payment of his debts. Such laws are designed for the benefit of honest and unfortunate debtors, who, by having the enjoyment of their future earnings secured to them, are encouraged to engage anew in industrial pursuits. The reason the power was given to Congress to pass such laws (29) was that if it were left to the States the object could not be accomplished. No State law could release a debtor from debts to a creditor living out of the State, nor from debts contracted in another State. The dissimilar and conflicting laws of the different States, and the entire want of them in others, had caused great inconvenience. Important as such laws were deemed, there is now (1894) no national law on the subject.\*

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\* Three such laws have been passed by Congress. Two of them existed but a year or two. The third was passed in 1867 and lasted until 1878. The reason for this short duration was the general sentiment that it allowed many dishonest debtors to procure a release from their debts.



**5. Coinage**—The coinage of the money is in every country a prerogative of the government. Congress has several powers with regard to coinage (30). No State can coin money (51). The object here, also, was to make uniformity throughout the country. Exercising these powers Congress has passed laws by which we have a uniform currency throughout the Nation, and the convenient decimal system of dollars and cents, instead of the awkward system of pounds, shillings, and pence which existed before the Constitution. The value of coin has been regulated in different ways: such as, by deciding how much metal (gold or silver) shall be put in a given coin, or what domestic coins foreign coins shall be equal to. The place where money \* is coined is called a *mint*. There are several in the country, the principal one being at Philadelphia.

**6. Weights and Measures**—For the convenience of trade between the States, the weights and measures, like the coinage, should be the same in all the States. Without such uniformity commerce among the States would meet with very great embarrassment. Yet Congress has never exercised the power given it on this subject (30). The States still have the power to adopt their own standard.†

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\* It must be remembered that coin is not the only money in the country. We have now in use United States notes, national-bank notes, gold and silver certificates, etc. Only coin and the United States notes are legal tender—*i.e.*, if a man wishes to pay a debt he must pay with one of those two, if the creditor insists upon it.

† The weights and measures used throughout the States are, however, substantially the same. In 1836 the United States Government sent to each State a full set of weights and measures, as used in the Custom House, and these have been adopted by the States as their standards.



**7. Post-Office**—The power of Congress over the mail is one of the most important it has (32).\* In every nation the government assumes charge of the Post-office. It is impossible to conceive all the difficulties which might attend the exercise of this power had it been left to the different States. A uniform system of regulations is indispensable to efficiency, and could be secured only by placing this power in the hands of Congress.

**8. Protection of Authors and Inventors**—This Congress has power to effect by granting *copyrights* and *patents* (33). “Science and useful arts” are promoted by new books and new inventions. But if every man had the right to print and sell every book or writing, without compensation to the author, there would be little to encourage men of ability to spend, as is often done, years of labor in preparing new and useful works. Nor would men of genius be likely to spend their time and money in inventing and constructing expensive machinery, if others had an equal right to make and sell the same. This power is given to Congress for the reason that if the States alone exercised it, no State could punish infringers beyond its own limits. In pursuance of the power here given, Congress has enacted the copyright and patent laws.

**9. Copyright**—A *copyright* is the sole right to print and sell a book, map, etc. It is obtained by the author by following a few simple requirements, the chief one of which is the mailing of two copies as soon as it is published to the Librarian of Congress.

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\* A post-road is a road over which the mail is carried. All rail-roads are by law made post-roads, and there are very many others besides.

This secures to the author the sole right to print and sell his work anywhere in the United States for twenty-eight years, at the expiration of which time he may have his right continued for fourteen years longer.

**10. Patents**—A *patent* is the sole right to make, use, or sell a new invention. It is obtained by the inventor from the government, but there is much more to be done than in the case of a copyright. The Commissioner of Patents superintends the granting of patents. The Patent Office is a part of the Department of the Interior (see page 178). To secure his patent the inventor must send to the Commissioner of Patents a written description of his invention, with drawings and model, and specify the improvement which he claims as his own discovery. If the examiners do not find that the invention had been before discovered, a patent is issued therefor, on the payment of certain fees. This secures to the inventor the sole right to make, sell, or use his invention anywhere in the United States for seventeen years.\*

**11. Courts**—Under the power to establish inferior courts (34) Congress has established a system of courts which will be described later (see page 180).

**12. Piracy**—Congress (and not the States) has power to define and punish crimes committed on the high seas (35). *Piracy* is commonly defined to be forcible

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\* In the case of both copyrights and patents, the granting of them is not proof that the book or invention is new. If any one is sued for infringement (*i.e.*, printing the book or using the invention without permission from the one holding the copyright or patent) he may claim that the book or the invention is not new, and if he proves it the court adjudges the copyright or patent to be void.

robbery or depredation upon the high seas. But the term *felony*\* was not exactly defined by law, consequently its meaning was not the same in all the States. It was sometimes applied to capital offences only; at other times, to all crimes above misdemeanors. The power to define these offences is given to Congress for the sake of uniformity, and the power to punish them, because the States have no jurisdiction beyond their own limits.

**13. Offences against the Law of Nations**—Nor were these clearly defined. The power to define and punish them is given to Congress (35), because our citizens are regarded by foreign nations as citizens of the United States and not as citizens of their respective States; and therefore the General Government alone is responsible to foreign nations for injuries committed on the high seas by our citizens.

**14. District of Columbia**—In 1790 this became the seat of government. Over it, and over all the forts, arsenals, etc., belonging to the United States, Congress has exclusive authority† (42). This authority is necessary for the protection of the government. If the seat of government were within the jurisdiction of a State, Congress and other public officers would be dependent on the State authority for protection in the discharge of their duties, and the State might refuse them protection. ‡

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\* Generally used to denote an offense of a high grade, punishable either capitally, or by a term of imprisonment.

† So also with regard to all territory not included within any State (see page 190).

‡ This actually happened to the Continental Congress. It was once, near the close of the Revolution, treated with insult and abuse while sitting at Philadelphia; and the executive authority of Pennsylvania having failed to afford protection, it adjourned to Princeton, in the State of New Jersey.

**15. Implied Powers**—It is a general rule that where one is granted the power to do a thing, it implies that he shall have power to use all the necessary means to accomplish it. The last clause of section 8 (43) then was unnecessary, for the granting of the “foregoing powers” granted also the power “to make laws necessary and proper for carrying them into execution.” \* The reason the clause was added was to satisfy all possible doubt. Under this right of implied powers Congress has passed laws which it has been difficult to refer to their proper clauses in the Constitution, and which have occasioned much discussion; such as laws establishing the national banks, incorporating railroads, purchasing foreign territory (such as Louisiana and Florida), and making the United States notes legal tender. In very many cases the laws passed under implied powers are wider in their scope and more important than those expressly authorized.

**16. Other Powers**—In other parts of the Constitution other legislative powers are given to Congress. They will be noticed in their order.

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\* For example: The power “to regulate commerce” includes the power to cause the construction of breakwaters and light-houses, the removal of obstructions from navigable rivers, and the improvement of harbors; for in regulating and facilitating commerce these works and improvements are necessary. So the power “to establish post-offices” implies the power to punish persons for robbing the mail.

## CHAPTER XXXI

## POWERS RELATING TO WAR

**1. Declaring War**—Congress alone has this right (36). It is very evident that a single State ought not to be allowed to make war. The power to declare it is justly given to the National Government, because the people of all the States become involved in its evils. In monarchical governments this important power is exercised by the king, or supreme ruler. But here it is entrusted, not to the President, but to the representatives of the people, because the people are they who have to bear the burdens of war.

**2. Letters of Marque and Reprisal**—These are commissions issued by a government to private persons authorizing them to seize the property of a foreign nation or its subjects, as a reparation for some injury.\* Congress has exclusive power to grant them (36, 51). A State should not be permitted to authorize its citizens to make reprisals; for, although such authority, when granted in time of peace, is designed to enable the citizens of one country to obtain redress for injuries committed by those of another, without a resort

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\* They are sometimes called simply *letters of marque*, and are often issued in time of war, and sometimes in time of peace. When issued, it is generally to the owners or master of some armed vessel, which then goes out and captures the vessels and property of the foreign nation on the ocean. Such a vessel is called a *privateer* (see page 281).

This method of obtaining reparation seems more like retaliation. But many things are allowed in war which are not justifiable at other times. Privateering is not as extensively practised as formerly.



to war, the tendency of reprisals is to provoke rather than to prevent war; and when granted in time of war it is merely one means of carrying on the war. In both cases the National Government alone should have the power to grant the commissions, as it alone has the power to declare war, because the whole country may become involved. The entire subject of war is taken away from the States and given to the Nation.

**3. Captures**—As a part of its power over war, Congress has power to make rules concerning the property captured in time of war. The general practice is to distribute the proceeds of the property among the captors as a reward for bravery and a stimulus to exertion. The property captured is called *prize*. But proof must be made in a court of the United States that the property was taken from the enemy, before it is condemned by the court as a prize.

**4. Army and Navy**—So also Congress has power to raise, maintain, and make rules for the government of an army and navy (37-40).\* Under the Confederation the Congress could declare war, but could not raise or pay a single soldier (see page 98). A government must have an army, or at least the power to raise one. Without one it is virtually powerless, for not only must a nation be ready to fight foreign foes, but also occasions will arise when its supremacy can be

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\* The policy of the country has been to maintain a very small army and navy, and undoubtedly much of our prosperity, as compared with other nations, is due to this. In European nations not only do the people have to bear the burden of an immense standing army, but in many of them several years of the best part of every man's life must be spent in service.



maintained against insurrections or rebellions among its own subjects in no other way. So also maritime nations must have a navy to protect their commerce. In ordinary times the United States army and navy are filled by voluntary *enlistments*, but when these do not furnish enough men Congress provides for a *conscription*, called during our late war a *draft*. By this the number needed are chosen by lot from among the citizens, and they are compelled to go, or furnish substitutes. In order that Congress shall not lose control of the army when raised, it is provided that no appropriation shall be made for a longer period than two years. It may, however, make as many successive appropriations as it sees fit, and they are now made every year for such year.

**5. Militia**—Congress also can provide for calling out the militia (40). It has so provided by delegating the power to the President, to be so exercised when he thinks the necessity provided for by the Constitution has arisen.\*

\* Though the President is Commander-in-Chief of the army, navy, and militia, Congress still has practical control of all, for before they can be paid Congress must raise the money and appropriate it (49). In ordinary times this is done every year.

## EXPRESS POWERS OF CONGRESS

[Under Art. I. sec. 8.]

## I. ORDINARY PEACE POWERS

## I. RAISING MONEY ;

- |   |                  |  |   |                          |   |                      |                  |
|---|------------------|--|---|--------------------------|---|----------------------|------------------|
| { | {                | 1. By Levyng,  | { | For the<br>purpose<br>of | { | 1. Payment of Debts, |                  |
|   |                  | <table border="0"> <tr> <td style="padding: 0 10px;">{</td> <td>1. Direct Taxes,</td> </tr> <tr> <td style="padding: 0 10px;">{</td> <td>2. Imposts, or</td> </tr> <tr> <td style="padding: 0 10px;">{</td> <td>3. Excises :</td> </tr> </table> |   |                          |   | {                    | 1. Direct Taxes, |
| { | 1. Direct Taxes, |  |   |                          |   |                      |                  |
| { | 2. Imposts, or   |  |   |                          |   |                      |                  |
| { | 3. Excises :     |  |   |                          |   |                      |                  |

3. General Welfare.

2. By Borrowing.

## II. COMMERCE, REGULATION OF;

- |   |   |                      |
|---|---|----------------------|
| { | { | 1. Foreign,          |
|   |   | 2. Among States, and |
|   |   | 3. With Indians.     |

## III. NATURALIZATION.

## IV. BANKRUPTCY.

## V. COINAGE;

- |   |                            |
|---|----------------------------|
| { | 1. Coining Money,          |
|   | 2. Regulation of Value, of |
- |   |                       |
|---|-----------------------|
| { | 1. Domestic Coin, and |
| { | 2. Foreign Coin.      |

## VI. WEIGHTS AND MEASURES, REGULATION OF.

## VII. POST-OFFICE; Establishment of

- |   |                      |
|---|----------------------|
| { | 1. Post-Offices, and |
|   | 2. Post-Roads.       |

**VIII. SCIENCE AND USEFUL ARTS, ENCOURAGEMENT OF, by granting**

- { 1. Copyrights, and**
- { 2. Patents.**

**IX. INFERIOR COURTS, ESTABLISHMENT OF.**

**X. CRIMES;**

- { 1. Piracies,**
  - { 2. Felonies on High Seas,**
  - { 3. International Offences,**
  - { 4. Counterfeiting ; . . . . . to punish.**
- { 1. U. S. Securities, and**  
**{ 2. U. S. Coin.**

**XI. TERRITORY; EXCLUSIVE LEGISLATION OVER**

- { 1. District of Columbia, and**
- { 2. Forts, etc.**

**II. POWERS RELATING TO WAR**

**I. DECLARATION OF WAR.**

**II. LETTERS OF MARQUE, GRANTING OF.**

**III. CAPTURES, RULES CONCERNING.**

**IV. FORCES;**

- { 1. Army,**
  - { 2. Navy,**
  - { 3. Militia, to Provide for**
- { 1. Raise,**  
**{ 2. Maintain, and**  
**{ 3. Make Rules for.**
- { 1. Calling out, to**  
**{ 1. Execute Laws,**  
**{ 2. Suppress Insurrections, or**  
**{ 3. Repel Invasions.**
- { 2. Organizing,**  
**{ 3. Arming,**  
**{ 4. Disciplining, and**  
**{ 5. Governing,**
- { at all times.**  
**{ when in U. S. service.**

## CHAPTER XXXII

## PROHIBITIONS ON THE UNITED STATES

**1. Where Found**—Section 9 of Article I. names certain subjects which Congress is forbidden to legislate upon.\* Most of these form exceptions to the powers granted in the preceding section.

**2. Slave-Trade**—From an early period slaves had been imported into the Colonies from Africa. At the time when the Constitution was formed, laws prohibiting the foreign slave-trade had been passed in most of the States, but the delegates from a few States in the Convention insisted on having the privilege of importing slaves secured. A majority of the Convention were in favor of leaving Congress free to prohibit the trade at any time. But as it was doubtful whether certain States would in such case accede to the Constitution, and as it was desirable to bring as many States as possible into the Union, it was at length agreed that the trade should be left free for twenty years to all the States choosing to continue it (**44, 79**). Once more, a compromise.†

**3. Habeas Corpus**—The nature of this writ has

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\* It must be remembered that sec. 9 of Art. I. does not apply to the States, but only to Congress. The prohibitions upon the States are found in sec. 10. For instance, a State legislature is not prohibited by the United States Constitution from suspending the writ of habeas corpus, as far as State offences are concerned. For this reason provisions similar to those in sec. 9 are generally found in State constitutions, as to habeas corpus, appropriations, statements, etc.

† Congress did, however, in 1808 wholly prohibit the slave-trade.

been heretofore explained (see page 88). The presence of this clause (45) here shows how important the writ was considered. In England its operation had at times been suspended for slight and insufficient reasons. The clause applies only to United States judges. They can grant the writ only in cases of violation of United States laws (see page 182).

**4. Bill of Attainder**—*Attainder* in this phrase means that forfeiture of property and loss of all civil rights (among them, the right to inherit property or transmit it to heirs) which a person formerly suffered who had been condemned to death for treason or other crime. A *bill of attainder* is an act (*i.e.*, a law) of a legislature inflicting this punishment upon some particular person and condemning him to death, without a regular trial in court. Such laws are inconsistent with the principles of republican government, and are therefore properly prohibited to Congress (46, 71).

**5. Ex post facto Law**—This is a law that makes punishable as a *crime* an act which was not criminal when done, or that increases the punishment of a crime after it has been committed.\* Such laws are unjust, and therefore wholly forbidden to Congress (46).

**6. Direct Tax**—What a direct tax or capitation tax is, has been already described (see Chap. XV., secs. 1 and 11). A prior clause has given the rule of apportionment of direct taxes (5). For greater security it was provided that no direct tax should be laid except

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\* If, for example, one should commit murder while the penalty was imprisonment for life, and the legislature should then pass a law, and apply it to his case, making the penalty death.

in that way, counting three-fifths of the slaves (47). But now if direct taxes were laid they would be in proportion to true population.

**7. Export Duties**—These are entirely forbidden to Congress (48). The reasons have been given before (see page 142, sec. 5). This clause forms an exception to the one in sec. 8 (26) which gives the right to lay duties.

**8. Equality in Trade**—It was the aim of the Constitution to secure to each State freedom and equality in trade. For this reason any preference of the ports of one State over those of another is forbidden (48).\*

**9. Appropriations**—An *appropriation* is a law providing that a certain sum of money in the treasury shall be paid out for a certain purpose. The Constitution provides that no money shall be drawn out except when so appropriated by Congress (49). This places the public money beyond the reach or control of the Executive or any other officer, and secures it in the hands of the representatives of the people. Even the President cannot draw his salary unless Congress makes the appropriation. In pursuance of this provi-

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\* The last part of that clause, referring to entry, etc., may not be easily understood. It does not mean that vessels going from one State to another shall not be obliged to enter, clear or pay duties (as it might be literally construed). There are laws of Congress enforcing these things in certain cases. It means only that when a vessel is bound from a certain State it shall be obliged to clear only in that State, and when bound to a certain State it shall be obliged to enter or pay duties only in that State. The purpose was to prevent vessels from being compelled to enter, clear or pay duties at ports from which they did not come or to which they were not bound. This very hardship had been imposed upon American commerce before the Revolution by England, who compelled American vessels sailing to a foreign port to first go to England.



sion, Congress, at every session, passes laws specifying the objects for which money is to be appropriated.

**10. Statements**—The clause requiring statements of the receipts and expenditures to be published makes Congress responsible to the people. Such statements are published annually, and short abstracts are published monthly (49).

**11. Titles of Nobility** \*—Congress is entirely prohibited from granting these (50). They would tend to introduce the distinctions of rank here that exist in many other countries, which the Constitution desires to prevent. As the Declaration of Independence says, “all men are created equal.”

**12. Relations of Officers with Foreign Sovereigns**—Officers of the United States Government are forbidden to receive any present, office, or title from any foreign state, unless with the consent of Congress (50). This is to guard them against foreign influence.

## CHAPTER XXXIII

### PROHIBITIONS ON THE STATES

**1. Treaties**—Section 10 of Article I. enumerates certain things which each State is forbidden to do. The first one is, to make any treaty, alliance, or confederation † (51). Another clause forbids a State to make any kind of agreement with another State or with a foreign power without the consent of Congress (52).

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\* See page 20, sec. 6.

† For the meaning of *treaty* see page 172. An *alliance* is a union for some common object. A *confederation* is a broader word, signifying a closer union.

If the States, separately, were allowed to make treaties or form alliances with foreign powers, the rights and interests of one State might be injured by the treaties made by another. As the States united constitute but one Nation, it is obvious that the power to treat with other nations properly belongs to the General Government.

**2. Letters of Marque**—The States are forbidden to issue these, as by doing so one State might, for local reasons, direct the enmity of a foreign nation against the whole Nation, and perhaps involve the whole country in war.

**3. Coinage**—This is forbidden to each State. One object in giving this power to Congress was that the coinage might be uniform (see page 150), but if each State had the power also, this object might not be attained.

**4. Bills of Credit**—The States are forbidden to emit them. *Bills of credit* are promises to pay certain amounts of money, issued for the purpose of being used as money. The purpose of the clause was to prevent the future occurrence of the evils they had already caused.\* The United States Treasury notes are bills of credit. Bank bills issued by State or national banks are not within the prohibition.

**5. Legal Tender**—The States are forbidden to make anything but gold and silver coin a tender in payment of debts. Tender, or, as it is usually called, *legal tender*, means that with which a debt may be

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\* *Bills of credit*, to a vast amount, were issued by the States during the Revolution, and for some time thereafter. This paper money, having no funds set apart to redeem it, became almost worthless.

paid, by law.\* Some of the States had declared their irredeemable paper money a lawful tender. But paper money and property of all kinds are continually liable to fluctuation in value, and might subject those who should be compelled to receive it to great inconvenience and loss. Gold and silver are considered more stable in their value.

**6. Bill of Attainder**—This is forbidden to the State legislatures for the same reason that it is forbidden to Congress (see page 161, sec. 4).

**7. Ex post facto Law**—The States are forbidden to pass such laws, as they are unjust (see page 161, sec. 5).

**8. Law Impairing the Obligation of Contracts**—The passage of such a law by any State legislature is forbidden. Laws that would release men from their obligations would be contrary to the principles of justice, and destroy all security for the rights of property.†

**9. Titles of Nobility**—The granting of these by any State is forbidden, for the same reasons as in the case of Congress (see page 163, sec. 11).

**10. Duties**—States are forbidden to lay duties on

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\* Not all money is legal tender. The legal tender in this country now is gold, silver, and U. S. notes (see page 150). The creditor may take what he chooses in payment of the debt, but he cannot be compelled to take anything but legal tender.

† As bankrupt laws release debtors from the payment of their debts, and consequently impair the obligation of contracts, the question has arisen whether the States have power to pass them. From decisions of the Supreme Court of the United States, which is the highest judicial authority, it appears that a State may not pass a bankrupt law discharging a debtor from the obligation of a contract made before such law was passed. But it was not to be considered a law impairing the obligation of a contract, if it existed before the contract was made ; because the parties, who are presumed to know that such law exists, may guard themselves against loss.

imports or exports (52). The reason that import duties are not allowed is that they may be uniform throughout the country. This has been explained before (page 142). Export duties are generally considered impolitic, as tending to discourage the industries of a country.

**11. Inspection Duties**—The exception allowing a State to lay duties necessary to execute its inspection laws was deemed proper. Laws are passed by the States for the inspection or examination of flour and meat in barrels, leather, and sundry other commodities in commercial cities, to ascertain their quality and quantity, that they may be marked accordingly. By this means the States are enabled to improve the quality of articles produced by the labor of the country, and the articles are better fitted for sale, as the purchaser is therefore guarded against deception. A small tax is laid upon the goods inspected, to pay for their inspection. But, lest the States should carry this power so far as to injure other States, these "laws are to be subject to the revision and control of Congress."

**12. Tonnage Duties**—These are duties laid upon vessels; so much per ton.\* They are forbidden to States (unless with the consent of Congress), as they are a means of regulating commerce, which is a subject given entirely to Congress.

**13. War**—We have seen that war is another subject of which Congress is to have complete control (Chapter XXXI.). For this reason the States are forbidden to keep troops or ships of war in time of peace, or to engage in war, without the consent of Congress.

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\* A vessel's tonnage is not what she weighs, but the number of tons of freight she can carry.

## PROHIBITIONS

[In Art. I., secs. 9 and 10.]

## I. ON THE UNITED STATES

## I. ON CONGRESS; as to

## I. Taxes;

- { 1. Export Duties,
- { 2. Direct taxes, not in proportion to census.

## II. Commerce;

- { 1. Abolition of Slave-Trade prior to 1808,
- { 2. Preference of Ports.

## III. Other Laws;

- { 1. Suspension of Habeas Corpus,
- { 2. Bill of Attainder,
- { 3. Ex post facto Law,
- { 4. Titles of Nobility.

## II. ON U. S. OFFICERS;

- { 1. Paying Money without Appropriation,
- { 2. Receiving from Foreign State, any

- { 1. Present,
- { 2. Emolument,
- { 3. Office, or
- { 4. Title.

## II. ON THE STATES; AS TO

## I. Taxes;

- { 1. Import Duties,
- { 2. Export Duties,
- { 3. Tonnage Duties.

## II. Agreements with other States or Nations;

- { 1. Treaty, etc.,
- { 2. Any Agreement.

## III. War;

- { 1. Letters of Marque,
- { 2. Troops, or War-vessels,
- { 3. Engaging in War.

## IV. Money;

- { 1. Coinage,
- { 2. Bills of Credit,
- { 3. Legal Tender.

## V. Other Laws;

- { 1. Bill of Attainder,
- { 2. Ex post facto Law,
- { 3. Law impairing Contract,
- { 4. Title of Nobility.

## SECTION III.—EXECUTIVE DEPARTMENT

## CHAPTER XXXIV

## PRESIDENT AND VICE-PRESIDENT: ELECTION, QUALIFICATIONS, ETC.

**1. Executive**—One of the strongest distinctions between the present Union and the Confederation is that now we have a full and strong executive department, while under the Confederation there was none (see page 98).

**2. Number**—In regard to the organization and powers of the executive department there was great diversity of opinion in the Constitutional Convention. The three principal points discussed were (1) whether it should consist of one person as chief, or more; (2) the term; and (3) the mode of election. First: ought the chief executive power to be vested in one person, or a number of persons? Laws should be executed with promptness and energy. This is more likely to be done by one man than by a number. If several were associated in the exercise of this power, disagreement and discord would be likely to happen, and to cause frequent and injurious delays. For this reason it was decided to have one President (53).

**3. Term**—Second: as to the term. It was argued that the term should not be so short as to induce him to act more with a view to his re-election than to the public good, nor so short that he would not feel some independence of the people, and could not carry out his system of public policy; nor so long that he would



feel too independent of the people. The term of four years was decided upon as the most likely to avoid all the objections (53). It commences March 4th next after the election. A new Congress is elected and begins its term at the same time as each successive Presidential term.

**4. Mode of Election**—Third: as to the manner of electing the President. Several modes were proposed in the Convention, among them these: by Congress, by the State legislatures, by the people directly, and by Electors chosen for the purpose in some way. The last was the one adopted (54). The object was two-fold: (1) to keep the legislative and executive departments distinct,\* and (2) to make certain of such a man being elected as would be worthy of the high position. If Congress elected him, it would be practically combining the two departments; and on the other hand, if the people elected him directly, it was thought that they might be led into error through popular enthusiasm or misconception, and that at the time of an election there would be great excitement; but if he was elected by a body of select men, they would act with more deliberation and their judgment would be probably correct. And if they were selected for that one purpose it was thought they would be better fitted for it than the State legislatures would be.

**5. Election of Electors**—The Constitution does not prescribe the manner in which the Electors shall be appointed or chosen; this is left to the States. At first no uniform mode was adopted by the different States, but at present in all the States they are

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\* For this reason no Member of Congress nor civil officer can be an Elector.

selected directly by the people, usually, by *general ticket*.\* By a law of Congress, the Electors are required to be chosen in all the States on the same day, which is the Tuesday next after the first Monday of November.

**6. Proceedings of Electors**—On the second Monday of January the Electors meet in their respective States and vote for President and Vice-President. What follows is amply described in the Constitution itself (Amend. XII.). In 1804 a change was made in the mode of electing the Vice-President.†

**7. Election by the House**—On the second Wednesday in February after the election the Electoral votes are counted, and if no one has obtained a majority, the House and Senate elect the President and Vice-President respectively. This is described in the Constitution and need not be repeated here (95).‡

**8. Present Practice**—When the Constitution was framed it was intended that the Presidential Electors should exercise their own personal judgment, and that thus the President should be selected by the calm wisdom of a body of men selected for their fitness to perform such a duty. But the existence of political parties and their action has nullified the plan. Now the nominating conventions put forward the candidates for the Presidency, and the Electors are afterward nominated and voted for entirely with reference to those candidates, it being known beforehand which

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\* That is, every voter votes for as many men as the State is entitled to have Electors.

† The Constitution itself shows what this was (55, 95).

‡ The President has been elected by the House twice ; Jefferson in 1801, and John Quincy Adams in 1825.

one of the candidates they will vote for; and they never exercise their judgment, but simply record the vote of the people. It is unfortunate that the original plan could not have succeeded, for the present practice is open to the objections of an election directly by the people, which it is in effect.

**9. Qualifications**—These the Constitution specifies (57). It will be noted that they are higher than those required for a Senator, because the office is so much more important. No length of residence here by a foreigner will qualify him.

**10. Vacancy**—In case of a vacancy in the office of President, the Vice-President becomes the President.\* Under the provision of the Constitution (58), Congress has enacted that, when there is neither President nor Vice-President, a member of the Cabinet shall, in the following order, act as President: The Secretary of State, Secretary of the Treasury, Secretary of War, Attorney-General, Postmaster-General, Secretary of the Navy, Secretary of the Interior.

**11. Salary**—The President has a salary, its amount being fixed by Congress. Congress may increase or diminish it, but not so as to affect the President in office at the time (59). If Congress could reduce his salary at pleasure, he could never afford to be independent of them. On the other hand, if it could be increased during his official term, he might be tempted to use undue influence to procure a needless increase.

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\* The Vice-President has no duties to perform as Executive of the Nation. He merely presides in the Senate. In dignity the office of President is much higher.

## CHAPTER XXXV

## POWERS AND DUTIES OF THE PRESIDENT

**1. Commander-in-Chief**—The President is commander-in-chief of the entire military force of the Nation (61). This power must be given into the hands of one man. If there were more (even two) there might be no firmness or promptitude, qualities absolutely necessary to render any army useful. The President is the proper person, for he is the Executive of the Nation. But the President does not take the field himself. The actual operations are conducted by his generals under his supervision.

**2. Reprieves and Pardons** \*—These may be granted by the President, but only in cases of convictions by the United States courts (61). Over State offences he has no jurisdiction. Peculiar cases may arise where, although a person is adjudged guilty of a crime, he does not deserve the punishment the law provides ; as if, for instance, new evidence should arise showing him to be innocent. But the pardoning power may be greatly abused, and some claim that it would be better to take it away altogether.

**3. Treaties**—A *treaty* is an agreement between nations, and it may be upon any subject : for peace, for war against some third power, concerning commerce, the mail, the return of escaped criminals, or any other subject. The power to make them for the United States rests with the President. But this is so

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\* See page 48, sec. 7.

important a duty that it is not intrusted to him alone, but two-thirds of the Senate must concur (62).\*

**4. Ministers**—These are officers sent to a foreign nation to represent their own nation there. In this country they are appointed by the President, with the advice and consent of the Senate. Some are now called *ambassadors*. Our government sends a minister to each of the civilized and semi-civilized nations of the world. They reside abroad and transact any business that our government may have with the government of the country where they are. They often negotiate treaties.†

**5. Consuls**—These the President appoints in the same way. *Consuls* are agents of inferior grade. They reside in foreign cities. Their business is to aid their respective governments in their commercial transactions with the countries in which they reside, and to protect the rights, commerce, merchants, and seamen of their own nation. Hence much of their business is with masters of vessels and with merchants.

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\* Treaties are *negotiated*; that is, the provisions or terms are arranged and agreed upon, by the agents of the two governments; and a copy of the articles of agreement is sent to each government to be *ratified*. Both governments must ratify, or the treaty fails. Treaties are ratified, on the part of our government, by the President and Senate. This is what is meant by their making treaties.

† Until recently we have rarely sent ambassadors, but *ministers plenipotentiary*. An ambassador who is intrusted with the ordinary business of a minister at a foreign court, and who lives there, is called an *ambassador in ordinary*. An *ambassador extraordinary* is a person sent on a particular occasion, who returns as soon as the business on which he was sent is done. He is sometimes called *envoy*; and when he has power to act as he may deem expedient, he is called *envoy plenipotentiary*; the latter word signifying full power.



**6. Judges**—The President and Senate appoint also the judges of the Supreme Court, and of the Circuit and District courts.

**7. Other Appointments**—Thus we see that the President has very important powers of appointment. Nor is he under the control of the Senate always, for under the Constitution (62) Congress has vested the appointment of very many inferior officers in him alone, or in the Heads of Departments, who are appointed by him and more or less under his influence. The advantage is that a President is thus better able to carry out his own policy if he has the selection of those who shall aid him. But the danger is that if we should obtain an ambitious or unprincipled President he might use the power of appointment simply to reward those who would advance his own interests, and greatly to the injury of the people.\*

**8. Vacancies**—But in those cases where the Senate must concur in appointments, vacancies will often occur while the Senate is not in session. In such cases the President may alone make temporary appointments (63). Without such a power somewhere, the public interests would often suffer serious injury. When the Senate acts on appointments it is said to go into *executive session*.

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\* For some time past the two political parties have used this power to advance their own interests, and when a new party has come into power very many of the civil officers have been removed without cause in order that members of that party might be appointed in their stead. The aim of Civil Service Reform is to establish the custom of retaining officers, at least of inferior rank, as long as they do their duty, and of appointing those best fitted for the office, no matter to which party they belong. This is the policy of England, and ought to be of our country.



**9. Removals**—Most of the officers, clerks, etc., in the Civil Service\* of the United States are appointed for no particular term, but hold office until the appointing authority removes them. Those appointed by the President, or any other officer alone, can be removed by him or such officer at any time. With regard to those whose appointments the Senate must concur in, it was urged at first by many that the consent of the Senate must also be obtained to the removal, but this has not been the practice. Up to 1867 the President exercised the power of removal alone in all cases. In that year the “tenure of office act” was passed, requiring the consent of the Senate to the removal of those officers whose appointment they must concur in. This, however, was repealed March, 1887.

**10. Message**—At every session the President sends to Congress a *message*, containing recommendations of the passage of such measures as he judges expedient (64). This, of course, gives little information, but it serves to fix the responsibility upon them.

**11. Convening Congress**—Besides the regular sessions each year, Congress may be convened by the President when he thinks an extraordinary occasion has arisen such as to render it necessary, but at such times they only act upon the subjects he lays before them.

**12. Reception of Foreign Ministers**—This is devolved upon the President as the proper person to repre-

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\* The “Civil Service” means the body of persons employed by the United States, from the Cabinet down to the lowest clerks in the Post-Office, except the army and navy. It includes now perhaps 100,000 persons.

sent the Nation. It is usually a merely formal matter, but may be one of great importance. In case a revolution has occurred in some foreign country and a new minister is sent here, the President in deciding whom he will receive must decide whether to recognize the new or the old government, and this might involve us in war.

**13. Execution of the Laws**—This is the most important and most comprehensive duty devolved upon the President. It calls upon him to see that above all things obedience is rendered to all the laws of the Union. It is for this purpose that he is made commander of the army and navy. In 1861 President Lincoln would have disregarded this high obligation had he refused to take every means to subdue those States which had openly revolted from the authority of the Nation.

By comparing this chapter with Chapter XI. it will be seen how similar the powers and duties of the President are to those of a State governor; but those of the former are as much more important in their exercise than those of the latter, as the Nation is greater than any State. The State constitutions generally have been modelled on the United States Constitution.

## CHAPTER XXXVI

### AUXILIARY EXECUTIVE DEPARTMENTS

**1. Departments**—The great amount and variety of the executive business of the Nation require the division of the executive department into several subordinate departments, and the distribution among them

of the different kinds of public business. These departments are nine in number, named as follows: (1) Department of State, (2) Department of the Treasury, (3) Department of the Interior, (4) Department of War, (5) Department of the Navy, (6) Department of Justice, (7) Post-Office Department, (8) Department of Agriculture, and (9) Department of Labor.

**2. Cabinet**—At the head of each of these Departments is a chief officer. These chief officers, sometimes called *Heads of Departments*, are named respectively the Secretaries of State, of the Treasury, of the Interior, of War, and of the Navy, the Attorney-General, Postmaster-General, Secretary of Agriculture, and Commissioner of Labor, and are appointed by the President with the consent of the Senate. The first eight of these form the *Cabinet*, and act as a council of advice to the President. Owing to this close relation between a President and his Cabinet it is usual for the Senate to confirm whomever the President selects for Cabinet officers.

**3. Department of State**—This department has charge of all the business of the Nation with foreign nations. The Secretary of State conducts all our diplomatic\* correspondence, being the official organ of communication with the ministers of foreign governments sent to this country, and with our ministers abroad. He is also the custodian of the seal, the laws, and other official documents of the Nation.

**4. Department of the Treasury**—To this belongs the charge of the finances of the Nation. It collects the revenue from customs and excises, pays the debts

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\* *Diplomacy* is the science of conducting negotiations between nations.

of the Nation, coins the money, and takes charge of all money paid to the government. The vast amount of business in this department requires a great number of assistants. All the custom-houses, mints, and sub-treasuries form part of it. The building devoted to its business in Washington is one of the largest there.

**5. Department of the Interior**—The chief subjects of which this department has charge are the taking of the *census* every ten years (5), the management and sale of the *public lands*, the management of the *Indians*, the payment of *pensions*,\* the granting of *patents*, and *education*.

**6. Department of War**—This department has charge of the procuring of supplies and equipment and other matters relating to the army. Its duties are of course far more important in time of war than in peace. The coast signal service belongs to this department.

**7. Department of the Navy**—This department has charge of the navy, the procuring of supplies and equipment of vessels of war, etc.

**8. Department of Justice**—The duties of the Attorney-General and his assistants are to attend to all suits in the United States courts in which the United States is interested, and to give their opinions in writing on legal questions when requested by the President or Heads of Departments.

**9. Post-Office Department**—This has charge of the

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\* A *pension* is a yearly allowance to a person by the government for past services. In this country pensions are granted to those who are disabled in war. If a soldier is killed a pension is granted to his widow or children. The amount of pensions now paid in this country is very large.

mail. All post-offices form a part of it. The Postmaster-General establishes post-offices, provides for carrying the mail, and has general charge of all matters connected with it.

**10. Department of Agriculture**—Here are investigated matters pertaining to the agricultural interests of the country, such as the destruction of injurious insects, the eradication of diseases of live-stock, the best kinds of seed, of manures, etc., etc. Its publications are widely distributed among the farmers, as are also large quantities of seeds of the best varieties.

**11. Department of Labor**—This is a purely statistical bureau, and is engaged in the collection and publication of facts relating to strikes, cost of production, wages, industrial depressions, and other matters bearing upon labor and industry.

**12. Other Executive Branches**—In addition to the departments mentioned, various other bureaus and commissions have been established, among which are the following:

(1) The *Interstate Commerce Commission*, devoted to the regulation of railway rates; (2) the *Civil Service Commission*, devoted to the examination of those entering the public service, for whom educational tests are imposed; (3) the *Fish Commission*, engaged in all matters pertaining to the improvement of fisheries in the United States; (4) the *National Museum, Smithsonian Institution and Bureau of Ethnology*, for the maintenance of a museum of natural history at Washington, and the study of North American anthropology; and (5) the *Government Printing Office*, wherein are printed the annual reports required of each Department, the "Congressional Record," or ver-

*batim* reports of the proceedings of Congress, and all other statistical and educational reports issued by the various branches of the government service.

## SECTION IV.—JUDICIAL DEPARTMENT

### CHAPTER XXXVII

#### NATIONAL COURTS AND THEIR JURISDICTION

##### *a. Courts*

**1. Necessity for National Judiciary**—We now come to the third article of the Constitution, providing a national judicial department. The Confederation had none, and was thus dependent on the States. The chief reason why a national judiciary is necessary in addition to the State systems is that the State judges might be biased in favor of their own State. Laws of Congress often bear with greater hardship on some States than on others, and public opinion in those States upon whom the burden lay might be so strong in opposition that no judge elected and supported by those people would sustain it. But if the judge belonged to a national system, and thus represented and was supported by the whole Nation, he would have nothing to fear, and thus his decision would be more impartial. The experience of the Confederation taught this.

**2. Courts**—The judiciary consists of four grades of courts: the *Supreme Court*, the *Circuit Courts of Appeals*, the *Circuit Courts*, and the *District Courts*. The Supreme Court is the highest court in the land, and was established by the Constitution itself (66).



The others were established by Congress. The Supreme Court consists of nine judges, and its jurisdiction is almost wholly appellate; that is, cases are not tried in it, but it only hears appeals from the other courts, and that only in the most important cases. It has original jurisdiction in a few cases. There are nine Circuit Courts of Appeals to which cases are appealed from the Circuit and District Courts. The judges of the Circuit Court of Appeals are Justices of the Supreme Court or judges of the Circuit or District Courts. Cases are sometimes appealed from the Circuit Court of Appeals to the Supreme Court. Of the Circuit Courts there are nine in the country. There are sixty-three District Courts. The jurisdiction of all the courts is both civil and criminal.\*

**3. Court of Claims**—No one has any right to sue a government. Such a right is inconsistent with sovereignty. So, in this country, no one has a right to sue the people (they are the government), for it is the people from whom he gets any right, even the right to his own property or his life, and to admit that any one had a right to force anything from them would be admitting that they were not sovereign. For this reason no one has a right to sue the United States, or any State (94). But Congress has established a court called the *Court of Claims*, in which those having claims which they think ought to be paid by the United States may bring a suit in the ordinary way, in form against the United States, and the court decides whether they should be paid. If it is decided in the claimant's favor it is so reported to Congress, and Congress generally will make an appropriation. But

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\* For explanation of the terms used in this section see page 79.

Congress is free to do as it chooses, and there is no way to compel payment. Some States have established similar courts of claims, but though proceeding in legal methods, they perform rather the functions of legislative committees than courts.

**4. Tenure of Office**—By the Constitution the judges hold office during good behavior (66). This means until removed on impeachment for bad behavior, and thus in most cases it means for life. In no other department of the general government are offices held for so long a term. The purpose is to insure a correct and impartial administration of justice by making them independent. If they could be displaced at the pleasure of the appointing power, or by frequent elections, they might be tempted to conform their opinions and decisions to the wishes of those on whom they were dependent for continuance in office. The object of the framers of the Constitution was to remove them as far as possible from party influence.

**5. Salary**—As with the President, so here, Congress, though it fixes the salaries of the judges, cannot diminish them while in office. To give Congress power over the purse of an officer is to give it power over his will. Dependence upon the legislature would be as great an evil as dependence upon the appointing power.

### *b. Jurisdiction*

**6. In General**—The jurisdiction of the United States courts does not extend to all kinds of cases, but only to such as the Constitution specifies, just as Congress has power to pass only such laws as the Constitution allows it to. The cases enumerated in the Constitution (67) in which the national courts have jurisdiction may be

divided into three general classes: (1) those arising under the Constitution, the laws of Congress, and treaties; (2) those affecting foreigners; and (3) those between different States or the citizens of different States.\*

**7. Cases arising under United States Laws**—Cases which arise under the Constitution, laws, or treaties of the United States may be those where a person is given a right by the Constitution, laws, or treaties which he does not have by the laws of his State (as, for instance, a right to sue an infringer of a patent granted to him), or where he violates a law of Congress, or treaty (as counterfeiting coin, or doing anything forbidden by a treaty), or where any question arises as to the meaning of the Constitution, laws, or treaties of the United States, or as to whether a law of Congress is constitutional† or not. In these cases it makes no difference whether the parties are citizens of the same State or not. The jurisdiction is given to the national judiciary for two reasons: (1) in order that in the interpretation and enforcement of its own laws it may not be dependent on the States, and (2) in order that the interpretation may be uniform throughout the country. Were it left to the State courts, some States

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\* It will be seen, therefore, that the great majority of cases between citizens of the same State must be brought in the State courts. So also the great majority of criminal cases are tried in the State courts.

† A law of Congress is unconstitutional (and wholly void) unless the Constitution has given Congress the right to pass it (see page 140). If, for instance, Congress should pass a usury law (that is, a law regulating the interest of money), or a law abolishing capital punishment, it would be void, because it has not been given these powers by the Constitution.

might decide that a law meant one thing, and other States that it meant another.

**8. Cases affecting Foreigners** — The decision of these properly belongs to the national courts, for the reason that if a foreigner is injured here, the Nation, and not the State, is responsible to the foreigner's government: therefore the Nation, and not the State, should redress the injury. And where the foreigner is an ambassador, or other minister, the Supreme Court has original jurisdiction of the case (68). This is in order to provide as certainly as possible against the danger of injustice being done, for it might involve the country in a dispute, or even war, with his country. All public ministers are treated with the highest respect, for this reason. Admiralty jurisdiction\* is also given to the national courts, for the reason that many admiralty cases affect foreigners. Another reason is that admiralty is a part of the regulation of commerce, which we have seen is a subject taken away from the States and given entirely to the United States.

**9. Cases affecting Different States, or their Citizens**—The third class of cases in which the national courts have jurisdiction is where the parties on the two sides, plaintiff and defendant, are either two different States, or citizens of different States. The reason for this jurisdiction is to prevent dissension among the States. If the decision of a question which

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\* Admiralty jurisdiction is jurisdiction of cases arising on the sea, or connected with vessels; as, for instance, cases of piracy, of collision on the sea, or claims for repairing a vessel, or contracts to carry freight or passengers. No State has any jurisdiction over the ocean.

affected two States were left to the courts of either, the controversy instead of being closed would be intensified. The history of the small German States and of the States under the Confederation illustrates this. But now, there being an impartial arbiter, the United States, the States submit to the decision.\*

## CHAPTER XXXVIII

### TREASON

**1. Why Defined.**—Treason is one of the highest crimes that man can commit. Yet, such deep resentment and alarm does it create among the people, for it is an attempt to overthrow the established government, that the tendency always is to see it in acts which may be innocent, and which at least do not have such a purpose. For this reason the Constitution itself says what shall be considered treason, and what proof shall be necessary to establish it (70). It must

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\* It will be noticed that the jurisdiction in the cases mentioned in this and the preceding section depends upon the character of the persons suing or sued, while in those mentioned in section 7 it depends upon the character of the case. When the case is such as to give the national courts jurisdiction it makes no difference whether the parties are citizens of different States or not, and when they are citizens of different States, or one is a foreigner, those courts have jurisdiction whether the case is one of those mentioned in section 7 or not. Not all the cases enumerated in sec. 2 of Art. III. (67) have been spoken of separately in the text. It will be a useful exercise for the pupil to write down each separate case mentioned there, and tell to which one of the three classes described above it belongs, and why. But he will be apt to make a mistake as to suits by citizens against States, unless he consults Amendment XI. (see page 198). A State cannot be sued except by another State.



be either making war against the United States, or adhering to its enemies. And it is not sufficient that there is an intention or even a conspiracy to do these things, though they are highly reprehensible. There must be some overt (*i.e.*, open) act, before it is treason.

**2. Proof**—The proof required is more than in the case of most crimes. Generally one may be convicted, even of murder, upon the testimony of one witness directly to the commission of the crime, or even without any direct testimony upon its commission, provided the other circumstances proven point toward it. But in treason against the United States, no matter what circumstances point toward it, there must be two witnesses to the same act.

**3. Punishment**—Under the authority given by the Constitution (71) Congress has declared the punishment of treason to be death, or, at the discretion of the court, imprisonment and fine; the imprisonment to be for not less than five years and the fine not less than \$10,000. An *attainder* of treason means here judgment by a court. In England formerly, when one was adjudged guilty of treason all his property was forfeited to the king, and he could neither inherit nor transmit property to heirs. This is what is meant by *corruption of blood*. Thus for a man's treason his innocent relatives were punished with him. But that is not so here. A law of Congress provides that no conviction (of any crime against the United States) shall work corruption of blood or any forfeiture of estate.

**4. The Civil War**—In this country there were no prosecutions for treason after the War, even of the leaders. They were, however, laid under certain polit-



ical disabilities, but even these have now (1894) been almost entirely removed.

**5. Other Crimes**—The great majority of crimes, such as murder, forgery, theft, etc., lie generally within the jurisdiction of the State. The State laws describe them, and the State courts punish them. The other subjects, beside treason, upon which Congress has authority to define offences and establish their punishment, and of which the national courts have criminal jurisdiction, are chiefly as follows: *All crimes committed on the sea*, piracy, murder, theft, etc.; *perjury* and other judicial crimes when committed *in the national courts*; *counterfeiting* United States notes or coin; *forgery* of patents or other *United States papers*; robbery of the *mail*, or other crimes connected with the postal service; *extortion* by a *United States officer*; the holding of *slaves*; and preventing any one from exercising his civil rights, by *intimidation* or other means.

## SECTION V.—MISCELLANEOUS PROVISIONS

### CHAPTER XXXIX

#### RELATIONS OF STATES

**1. Records**—Article IV. of the Constitution contains a number of important provisions, most of which affect the relations of the States to each other and to the General Government. The first one is in regard to the effect which the laws, records, and judgments of one State shall have in another, and the provision is that they shall have full effect everywhere (72).

For instance, if a person is sued in New York and there is a decision on the merits against him, it is decided, once for all, and it may be enforced against him wherever he goes. Were it not for this clause States might provide that no matter how many times a question had been tried, it must be tried over again with all the evidence before they would enforce it. Congress has prescribed the manner in which public acts and records may be proved, and when proven they are conclusive as to the things stated in them.

**2. Privileges of Citizens**—No State can grant privileges to its own citizens, from which the citizens of other States are excluded (73). The purpose is to put all on an equality everywhere. Without such a provision, any State might deny to citizens of other States the right to buy and hold real estate, or to become voters after living in the State the prescribed time, or to enjoy equal privileges in trade or business.

**3. Fugitive Criminals**—The officials of one State have no power in another State as officials. For instance, the police or sheriff of New York City have no power to arrest a murderer in Jersey City. But the Constitution provides against the escape of criminals in this way (74). The Governor of the State from which such person has fled, sends a *requisition* to the Governor of the State in which he is found, demanding his delivery to the first State. This requisition is usually complied with, and yet cases have occurred in which a Governor has refused to deliver up an accused person, and there is no way provided to compel him. This seems to have been an oversight on the part of the framers of the Constitution.

**4. Fugitive Slaves**—By the common law, a slave

escaping into a non-slaveholding State became free. As it was presumed at the time the Constitution was framed that other Northern States would follow Massachusetts in abolishing slavery, the Southern States wanted some provision to enable them to reclaim their fugitive slaves. The Northern States, though opposed to this, yielded for the sake of unity (75). Escaped slaves were, under this provision, returned to the South up to 1861. The clause is of course obsolete now.\*

**5. New States**—The provision (76) with regard to the admission of new States into the Union was deemed necessary in view of the large extent of vacant lands within the United States, and of the inconvenient size of some of the States then existing. The territory north-west of the Ohio River had been ceded to the General Government by the States claiming the same. South of the Ohio River also was a large tract, principally unsettled, within the chartered limits of Virginia, North Carolina, and Georgia, extending west to the Mississippi. These two tracts it was presumed would soon become so thickly populated as to require separate governments. Since that time vast tracts have been acquired from France, Spain, Texas, and Mexico. From all these tracts thirty-one new States have been formed and admitted into the Union. When formed from the territory of the United States the consent of Congress only is required, but when formed from the territory of another State the consent of that State must also be obtained.† The case of West Virginia was exceptional.

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\* The words "slave" does not appear in the original Constitution.

† After the late war Congress declared the Southern States to have

**6. United States Territory**—Congress has complete power over the territory not organized into States (77). It establishes territorial governments, and these carry on all the ordinary governmental duties, but they are subject to the control of Congress. The clause with regard to the claims of States has no effect at the present day.

**7. Protection by United States**—The United States must always see to it that the State governments are republican in form (78). The object is to perpetuate republican institutions. If some large State should establish a monarchy, it might in time engulf smaller ones, and in the end destroy the Constitution. Its policy would be in opposition to all republican institutions. So, if a State is in danger from invasion, or insurrection, it may call on the Nation for assistance.

## CHAPTER XL

### AMENDMENT : DEBT : SUPREMACY : OATH : TEST : RATIFICATION

**1. Reason for Amendment**—Article V. describes the manner in which the Constitution may be amended (79). As the best human government is imperfect, and as all the future wants and necessities of a people cannot be foreseen and provided for, it is obvious that every constitution should contain some provision for its amendment.

**2. Mode of Amendment**—This is described in the

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no lawful governments, and placed them under temporary military governments. In time they adopted new constitutions, and were readmitted to the Union by Congress.

Constitution (79). If amendments could be made whenever desired by a bare majority of the States, the strength and efficiency of the Constitution might be greatly impaired by frequent alterations. It is therefore wisely provided that a mere proposition to amend cannot be made except by a majority of at least two-thirds of Congress, or of the legislatures of at least two-thirds of the States ; and that such proposition must be ratified by a still larger majority (three-fourths) of the States. It was thought better to submit occasionally to some temporary inconvenience than to indulge in frequent amendments.

**3. Public Debt**—The clause (80) which adopts the prior debts of the country was intended to allay the fears of public creditors, who apprehended that a change in the government would release the Nation from its obligations. But their fears were probably groundless, for one purpose in changing the government was to provide a way to pay those debts.

**4. Supremacy**—The next clause (81) declares that the Constitution, the treaties and the laws of Congress shall prevail over any State law or constitution. This is the clause giving efficacy to the whole Constitution. If any State could nullify the national law, nothing would be gained by the Union. Now, when a State law or State Constitution is passed contrary to the law of the Nation every one must consider it void, and the State judges must declare it so.

**5. Oath of Allegiance**—All members of all State and national, legislative, executive, and judicial departments are required on taking office to take the oath of allegiance, *i.e.*, to support the Constitution of the United States (82). Binding the conscience of public officers



by oath or solemn affirmation has ever been considered necessary to secure a faithful performance of their duties. They are generally required to swear not only to support the Constitution, but also to discharge the duties of their offices to the best of their ability.

**6. Test Oath**—In the same clause, *test* (often called *test oath*) means an oath or a declaration in favor of or against certain religious opinions, as a qualification for office. In England, all officers, civil and military, were formerly obliged to make a declaration against transubstantiation, and to assent to the doctrines and conform to the rules of the established church. The object of forbidding it here was to secure to every citizen the full enjoyment of religious liberty. But this clause does not bind the States. They can provide tests, but usually they have similar clauses in their constitutions.

**7. Ratification**—By the Constitution (83) nine States were to ratify it before it had binding effect in any. The immediate ratification of the Constitution by all the States was hardly to be expected; a unanimous ratification, therefore, was not required. But a Union of less than nine States was deemed inexpedient. The framers concluded their labors on the 17th of September, 1787; and in July, 1788, the ratification of New Hampshire, the ninth State, was received by Congress.\*

**8. Commencement of Government**—Thus in July, 1788, the government had begun. During 1788 and the

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\* The Constitution could not become binding on any State except by its own ratification, for the State was sovereign. But with amendments it is different. When accepted by three-fourths they are binding on all. They have given up their sovereignty to this extent. By accepting the Constitution at first each State agreed that amendments might be made binding in that way, even against their consent.



early part of 1789, Senators, Representatives, and Presidential Electors were chosen by the States. In February, 1789, General Washington was elected President by the Electors, and was inaugurated April 30th following, when the 1st Constitutional Congress assembled.

## CHAPTER XLI

### THE FIRST TWELVE AMENDMENTS

**1. In General**—It is remarkable that during so long a period the Constitution has received so few changes. Up to 1865, though twelve amendments had been added, only the last two of them had made any alteration in the original provisions. This proves the wisdom and skill of the patriots who framed it, to whom we should be ever duly grateful for having furnished our country with so admirable a bulwark of liberty.

**2. Bill of Rights**—This is a name given to the first ten amendments, because they contain a list of the rights deemed most important to the liberty of the people. These amendments do not change any original provision of the Constitution. They act merely as restrictions and limitations upon the powers of Congress, and were deemed unnecessary by those who framed the Constitution, for the reason that those rights were so generally acknowledged, and that the powers of Congress were limited to those expressly granted to it. But as several of the State conventions had, at the time of adopting the Constitution, expressed a desire that declarations and guaranties of certain rights should be added, in order to prevent misconstruction and abuse, the first Congress, at its first ses-

sion, proposed twelve amendments, ten of which were ratified by the requisite number of States.

**3. Its Purpose**—As long as popular liberty lasted sufficient to maintain any part of the Constitution it is not probable that any of these rights would have been violated, even had they remained unexpressed. And yet it was of value to express them. They are thus kept in the mind of all, serving as reminders, both to the ambitious man who in his power grows neglectful of the people's rights, and to the people themselves, who sometimes, through excitement and sudden indignation, are inclined to forget the rights they have guaranteed to every one. It is important to remember that the first twelve amendments affect only Congress and the national courts, not the State legislatures. For this reason similar provisions are often inserted in State constitutions, to bind the State legislatures and courts. We will refer briefly to these amendments in their order.

**4. Religious Freedom**—The object of the 1st Amendment was to prevent the National Government from abridging religious freedom in any degree (**84, 82**). In England, though all were free to worship as they chose, yet there was an established church, supported by the government. Here it was thought best not only to have perfect liberty in religion, but also to have the Church and State entirely separate.

**5. Freedom of Speech and of the Press**—These have been before defined (page 16). Congress is forbidden to pass any law abridging them (**84**). The object of this provision was not to allow one to go unpunished who uttered slander or published libel. It was intended to prevent all use of those means which

in former times had been used to repress the people, by forbidding them to speak or write on certain subjects unless licensed by the government beforehand. At one time it was the law in certain countries that even the Bible should not be printed except in a certain language, which the people did not understand. So, also, governments would require all books to be licensed before they could be printed, and would forbid the utterance of any criticism, no matter how just or honest, against them or their officers.

**6. Right to Assemble**—So, too, Congress is forbidden to pass any law abridging the right of the people to assemble and present petitions to the government (84). Under pretence of preventing insurrection governments have at times denied the people this right.

**7. Right to Keep Arms**—This means the right of every one to own and use, in a peaceful manner, warlike weapons; Congress is forbidden to pass any law infringing the right (85). It was thought that without it, ambitious men might, by the aid of the regular army, overthrow the liberties of the people and usurp the powers of government.

**8. Quartering of Soldiers in Private Houses**—The 3d Amendment arose from a remembrance of past experience (86). Among the grievances enumerated in the Declaration of Independence was one “for quartering large bodies of armed troops” among the people of the Colonies.

**9. Searches and Seizures**—A *search-warrant* is a paper issued by a court directing a person's premises to be searched, because it is suspected there is stolen property there or property subject to duty. A *seizure* is the taking of such property, or the arrest of the

person, by the officer. In the early times of English history these had been converted into instruments of tyranny. Search-warrants had been sometimes granted when no accusation had been made, and in blank, so that by filling out the blank the officer could search any house he chose. The 4th Amendment forbids Congress to pass any law authorizing warrants to issue, except when good cause is shown, and supported by oath (87).

**10. Criminal Proceedings**—The object of most of the provisions of the 5th and 6th Amendments is the protection of one accused of crime. Popular opinion is generally hasty in cases of crime, and the rights named in these amendments, most of which are easily understood,\* are such as had been found necessary in the history of justice in England to save innocent persons from punishment. By them Congress is forbidden to pass any law infringing these rights (88, 89). So important was the trial by jury in criminal cases considered, that it had been inserted in the body of the Constitution (69).

**11. Private Property**—Every government of unlimited powers has the right to take the private property of any person, for some public use, and it may be done even without compensation. This is called the right of *eminent domain*. But even in those cases where Congress has this right, the 5th Amendment forbids its exercise without just compensation being paid the private owner (88).

**12. Trial by Jury in Civil Cases**—We have seen that the jury trial is secured in criminal cases (69).

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\* In the 5th Amendment "twice put in jeopardy" means tried again after having been once acquitted.

The 7th Amendment requires it in civil cases \* also (90). Both these provisions refer only to cases in United States courts. The 7th Amendment also provides what the effect of a jury's verdict shall be. By the rules of the common law, when the jury had rendered a decision upon a question of fact upon which some witnesses had testified in one way and others in another, that question could not be re-examined in a higher court. After the passage of the Constitution it was thought that the clause which gives the Supreme Court appellate jurisdiction both as to law *and fact* (68) might give it power to overthrow the verdict of a jury, and therefore this amendment was added. Thus we see how carefully the Constitution protects the security, liberty, and property of the people.

**13. Excessive Bail**—Bail has been described (page 88). But it will be seen that the amount of the bond might be fixed so high as to prevent persons accused of crime from procuring the necessary sureties; whereby innocent persons might be subjected to long imprisonment before the time of trial. To prevent this in the United States courts is the object of the 8th Amendment. So, also, the degree of punishment is often left to the discretion of the court, as in the case of treason, where any amount of fine over \$10,000 may be imposed. This amendment serves as a safeguard against excess (91).

**14. Rights of People**—There were those who

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\* The amendment says "suits at common law." These are distinguished from suits in *equity* or *admiralty*. It is unnecessary to give the meanings of these terms here. "Common law suits" include a large majority of all civil cases.



feared that because the Constitution mentioned certain rights as belonging to the people, those not mentioned might be considered as having been surrendered to the General Government, or as having never existed. To prevent such possible misconstruction was the object of the 9th Amendment (92).

**15. Powers not Delegated**—So, also, the 10th Amendment was strictly unnecessary, for it is self-evident that what one has and does not give away he still retains (see page 140). But many were fearful that the central government might absorb the powers rightfully belonging to the States, and this was inserted to prevent such abuse (93).

**16. Suits against States**—No State court can entertain any suit against a State. The 11th Amendment forbids the United States courts to entertain them (except by one State against another) (94). During the Revolution the States had issued bills of credit which had not been paid. After the adoption of the Constitution suits were brought against some of the States by private persons to enforce payment of these bills of credit, and the Supreme Court decided that under the judicial clause (67) this could be done. It was in consequence of this decision that the amendment was passed. Now there is no way for a private person to sue a State in any court. It is thought best to leave a State free to settle its obligations in its own way and in its own time.

**17. Election of President**—This is the subject of the 12th amendment (95, 96), and has been elsewhere treated (page 168). This amendment was adopted in 1804. Under the plan first adopted the chief opponent of the President became the Vice-



President, and as the country had become divided into two great opposing parties, they would naturally belong each to one of those. Now the Vice-President will usually belong to the same party as the President. Many have doubted the wisdom of this change.

## CHAPTER XLII

### THE 13TH, 14TH, AND 15TH AMENDMENTS

**1. In General**—These three amendments were the logical political result of the Civil War. Its ultimate cause was negro slavery ; its final result, the raising of the negro to an equality before the law with the white man. These amendments differ from the others in this respect, that they are binding on the States as well as on the National Government. The States are named in them.

**2. Slavery**—In 1863 President Lincoln had issued the Emancipation Proclamation. Whether this had any legal effect or not, the adoption of the 13th Amendment in 1865 did abolish slavery throughout the country (98).

**3. Civil Rights**—But it is evident that a person, though not a slave, may not have all the civil rights of others, as the right to acquire, hold, or sell property, to engage in trade, to live where he pleases, etc. The slaves, emerging from slavery, had no civil rights. But by the 14th Amendment they are made citizens and all civil rights bestowed upon them (99). This was the second step in the elevation of the negro.

**4. Apportionment of Representatives** — Thus 4,000,000 people were added to the number of citizens

in the United States, and they should be represented in the House. Therefore the total population was made the basis of representation. But it was anticipated that the Southern States might not give the negro the right to vote, and thus he would be deprived of his representation in the House, while the white population of the South would derive all the gain from the increased representation, and therefore it was provided that whenever any State denied the suffrage to any male citizens of the United States, its Representatives should be proportionately decreased in number (100).

**5. Political Disabilities**—We have seen that all officers of any State or the United States were required (82) to take an oath to support the Constitution. The North considered that engaging in war against the National Government was attempting to subvert the Constitution, and therefore a breach of that oath. Therefore it was thought best to deprive such as had taken the oath and afterward engaged in war against the Union, of the right to hold office (101). But Congress was allowed to remove the disability, and has done so in case of all but a very few.

**6. National Debt**—The 14th Amendment also recognizes and declares the validity of the national debt, but forbids the payment of any debt incurred in aid of rebellion, or any claim for the emancipation of the slaves (102). The South had incurred a large debt in the war, which was thus made void.

**7. Right of Suffrage**—But though the colored race had all the civil rights, it had not as yet the right to vote. We have seen that the qualifications of voters is a matter belonging to the State (pages 26, 148, *note*).

But by the 15th Amendment the State is forbidden to deny the right of suffrage to any one on account of his "race, color, or previous condition of servitude" (103). Thus the third and final step was taken in the constitutional changes, by which the black man was raised to a political equality with his fellow-man.

**8. Final**—We have now completed our review of the National Government. The system established by the Constitution is peculiar, and is not necessarily suited to other countries. But as we study the Constitution our admiration for it should grow. The marvellous prosperity of the country, commercial and political, up to 1860, proved how well suited it was to our necessities, and the history of the years since the Civil War has shown how well grounded it is in the love of the people.

## REVIEW QUESTIONS

### THE NATIONAL GOVERNMENT

#### *Origin and Nature*

1. How was this country governed prior to the Revolution?
2. State the causes of the Revolution.
3. State the political effect upon the Colonies of the Declaration of Independence.
4. When was the Confederation formed? How long did it last? State its principal defects.
5. State when the Union was formed. Its fundamental difference from the Confederation. The chief differences in detail.
6. What is the difference between a Confederacy and a Nation?
7. Give some instances showing the partial retention of the federative principle in the National Government.

#### *Legislative Department*

8. Name the six objects of the Constitution stated in the preamble.
9. How many members are there in the House of Representatives?  
By whom elected? For what term? How apportioned

among the States at first ? How apportioned now ? Qualifications ?

10. Answer the same questions as to the Senate.
11. What is the object of two legislative houses ?
12. Is the Senate or House of the higher dignity ? Why ?
13. How often does Congress meet ? When ? Define "A Congress."
14. By whom is impeachment made ? By whom tried ?
15. State the powers of each House as to its members, officers, quorum, adjournment, rules, journal, yeas and nays.
16. What privilege have members of Congress as to arrest ? Why ? As to liberty of speech ? Why ?
17. What bills may originate in the House ? In the Senate ?
18. State the reason for the provision as to revenue bills.
19. Name all the ways in which a bill, having passed both Houses, may become a law.
20. State the fundamental difference between Congress and a State legislature as to the origin and extent of their powers.
21. Name the subjects on which Congress may legislate.
22. What taxes may Congress lay ? For what purposes ?
23. From what source does most of the national revenue now come ?
24. Why has Congress the power to regulate commerce ? In what ways is it exercised ? Explain retaliation duties.
25. What is Protection ? Free Trade ? State the chief argument for each. Which is the policy of the United States ?
26. What is Registry of vessels ? Clearance and Entry ?
27. What is a citizen ? An alien ? Naturalization ?
28. What is a bankrupt law ? The power, why given to Congress ?
29. State the powers of Congress as to coinage ; as to weights and measures ; as to the Post-Office. Why given ?
30. What is a copyright ? A patent ? What are their objects ?
31. What powers has Congress as to piracy ? as to offences under international law ? Why given ?
32. Over what parts of the United States has Congress exclusive authority ?
33. Name some of the implied powers of Congress.
34. Who has the power to declare war ? Why ?
35. What are letters of marque ? What is prize ?
36. How is an army raised ? How does Congress control it ?
37. By whom may the militia be called out ? When ?
38. Name the prohibitions upon the United States.
39. What is habeas corpus ? A bill of attainder ? An ex post facto law ? An appropriation by Congress ?
40. State the reason for the prohibitions as to titles of nobility.
41. Name the prohibitions upon the States.
42. State the difference between money and legal tender.
43. What is legal tender in the United States now ?

#### *Executive Department*

44. What is the advantage of having but one President ?
45. By whom is he elected ? For what term ?

46. What other modes were proposed ? State the objections to them. What was the purpose of the present one ? Was its purpose accomplished ? Why ?
47. Are Presidential Electors elected or appointed ? By whom ? State their proceedings.
48. When does the House elect the President ? How does it vote ?
49. What are the President's qualifications ? Salary ?
50. What are the duties of the Vice-President ?
51. State the President's powers as to the army and navy, reprieves and pardons, treaties, and appointments.
52. What is the danger connected with this power of appointment ?
53. What is the purpose of the President's message ?
54. What is the most comprehensive duty of the President ?
55. Name the auxiliary executive departments, and their duties.

### *Judicial Department*

56. Explain the necessity for a national judiciary.
57. Name the national courts.
58. Can the United States be sued ? Why ?
59. What is the Court of Claims ? How are its judgments enforced ?
60. Are the judges appointed or elected ? By whom ? For what term ?
61. State the three classes of cases in which the United States courts have jurisdiction, with the reason in each case.
62. What is treason ? What proof necessary ? Its punishment.
63. Name the crimes which the United States may punish.

### *Miscellaneous Provisions*

64. State the provision of the Constitution as to the rights of citizens of one State in another.
65. How are fugitive criminals returned ?
66. What protection must the United States extend to the States ?
67. How may the Constitution be amended ?
68. When a law of Congress and a State law are antagonistic, which must prevail ? A law of Congress and a State constitution ?
69. What persons are obliged to take the oath to support the Constitution ?
70. How did the Constitution originally become binding on a State ? How does an amendment to it ?
71. How many Amendments are there ? What is the Bill of Rights ? Its purpose ?
72. State the substance of each amendment, when it was passed, and its purpose.
73. Can a State be sued by a State in a State court ? In a national court ?
74. Can a State be sued by a private person in a State court ? In a national court ? Why ?





# WISCONSIN

ITS STATE AND LOCAL GOVERNMENT  
WITH THE CONSTITUTION  
AS AMENDED

BY

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NEW YORK



# WISCONSIN

## ITS STATE AND LOCAL GOVERNMENT

WITH THE  
CONSTITUTION, AS AMENDED.

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### TO TEACHERS

#### HELPS TO THE STUDY OF CIVIL GOVERNMENT

This supplement is prepared as an aid to teachers in making the young people of Wisconsin acquainted with their State, its forms of government, and institutions. Necessarily, the various topics are treated with brevity, though, it is hoped, with sufficient thoroughness to suggest the way in which the whole work had best be taught by an interested and competent teacher.

Whatever the pupil knows of the workings of local forms of government should be utilized constantly. He should be encouraged and directed to learn more by observation. Among the aids to this end, accessible to the ordinary teacher, the following are suggested :

1. The newspapers ; party calls for the holding of caucuses and conventions ; election notices ; sample ballots ; reports of court proceedings ; reports of proceedings of town boards, county boards, and city councils, etc.
2. A copy of the Blue Book.
3. A copy of the Railroad Map of Wisconsin.
4. A copy of the Election Laws.
5. A copy of the School Laws.
6. A copy of the State Census Report.
7. Copies of the reports of the various state institutions.
8. Reports of the state officers, especially of the Secretary of State and the State Treasurer.

The Annotated Statutes, the County History, Thwaites' Story of Wisconsin, the standard U. S. Histories, and the great Cyclopædias, when they can be had, should also be used freely.

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# WISCONSIN

## ITS GOVERNMENT AND CONSTITUTION

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### CHAPTER I.—INTRODUCTORY

**1. History**—Wisconsin, the youngest of the five great States formed from the “Territory of the United States northwest of the river Ohio,” was admitted into the Union May 29, 1848. By the provisions of the famous Ordinance of 1787, the southern boundary of Wisconsin should have been, “an east and west line, drawn through the southern bend or extreme of Lake Michigan.” On the northwest, all that valuable territory between the Mississippi, the St. Croix, and the boundary line between the United States and Canada, as far west as the Lake of the Woods, belonged, of right, to Wisconsin. So, too, did the upper peninsula of Michigan on the northeast. If Wisconsin had had her own, Chicago, St. Paul, Duluth, a large part of Minneapolis, and many other smaller cities, would have been hers.

**2. Rank and Resources**—The story of how Wisconsin was clipped of her territory is very interesting history, but this is not the place to tell it. Wisconsin, as she is, is a great State. By the census of 1895, she has very nearly two million inhabitants (1,937,915). She is the fourteenth State in the Union, in population. She has vast and varied natural resources, still, in great part, undeveloped; a healthful, stimulating climate; an ad-

mirable school system; good laws, honestly and faithfully administered; and an intelligent, progressive, patriotic people.

**3. A Cosmopolitan State**—Wisconsin is a cosmopolitan state. The lead regions early attracted people from the east and from the States bordering on the Ohio. Kentuckians were very numerous. They have left their impress upon the speech and customs of the people of these regions, and upon the institutions of the State. A very large part of the native-born population is of New England origin—people who tarried a while in western New York and Ohio on their way westward. During the constitution-making period, this element was the dominant one. Of the sixty-nine members of the convention that framed the constitution, twenty-five were natives of New York. And so it came to pass that the constitution was modeled after the constitution of New York, and not, as seemed probable earlier, after that of Kentucky.

**4. The Germans**—In Milwaukee County, and all the other eastern counties, and in many other portions of the State, the Germans have settled in very large numbers. The history of their immigration into Wisconsin is extremely interesting. That great movement of population was thoroughly organized. Settlements were made only after most careful and wise selection. Many of the settlers were people of high intelligence and culture. They came early, and their influence has been felt profoundly, in all the lines of the State's growth and development.

**5. The British and Irish**—The British and Irish are numerous, widely diffused, and influential. Their names appear in the lists of governors, statesmen, jurists, mer-



chants, bankers, educators, and members of every other honorable calling.

**6. Other Foreigners**—In Milwaukee and a few other places, the Polish element is strong. Scandinavians are numerous and influential in the lumbering regions and elsewhere. The Swiss are strong and prosperous in Green County. There are Frenchmen, Hollanders, Italians and other foreign elements, but not in such large numbers as those already enumerated.

**7. Effects upon the State**—As has been seen, the elements of the population are very various. They differ very widely in nationality, social customs and religious beliefs. To this fact is due certain striking peculiarities in the constitution and laws, such as the strict exclusion of sectarian instruction from the public schools, and the extremely liberal provisions regarding the rights of suffrage, office-holding, and the ownership of land.

## CHAPTER II.—DISTINGUISHING CHARACTERISTICS OF THE AMERICAN SYSTEM OF GOVERNMENT

**1. The American System.**—In beginning the study of the constitution of his State, the student must keep clearly in mind the chief characteristics of the American form of government. Every citizen of Wisconsin is subject to two governments, that of the State and that of the United States. These two governments are organically interrelated. The State government presupposes the United States government. The United States government presupposes the State government. The student cannot understand the State government unless he understands the United States government, nor the United States government unless he understands the State

government. He has many duties, rights, privileges and immunities. Some of these arise out of his United States citizenship; others out of his State citizenship. The United States government and the separate State governments, together, form one government which may well be called the American system.

**2. Its Chief Characteristics**—As distinguished from most other governments of the world the American system presents these characteristics:—

**a.** The recognition of the people as the source of all power.

**b.** A very strong central government, with supreme authority, in certain well-defined and carefully guarded fields.

**c.** The universal application of the principle of local self-government.

**d.** As between the central government and the separate State governments, the extremely large range of powers left to the separate States, with which the United States have nothing whatever to do.

**e.** Written constitutions, defining and limiting the powers of the government, particularly the legislative powers.

# CHAPTER III.—CONSTITUTION OF THE STATE OF WISCONSIN

AS AMENDED

## PREAMBLE

- 1 We, the people of Wisconsin, grateful to Almighty God for our freedom, in order to secure its blessings, form a more perfect government, insure domestic tranquillity, and promote the general welfare, do establish this Constitution.

## ARTICLE I

### DECLARATION OF RIGHTS

- 2 SECTION 1. All men are born equally free and independent, and have certain inherent rights; among these are life, liberty, and the pursuit of happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

- 3 SECTION 2. There shall be neither slavery nor involuntary servitude in this State otherwise than for the punishment for crime, whereof the party shall have been duly convicted.

- 4 SECTION 3. Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libel, the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libelous be true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the facts.

- 5 SECTION 4. The right of the people peaceably to assemble to consult for the common good, and to petition the government or any department thereof shall never be abridged.

- 6 SECTION 5. The right of trial by jury shall remain inviolate, and shall extend to all cases at law, without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases in the manner prescribed by law.

- 7 SECTION 6. Excessive bail shall not be required, nor shall excessive fines be imposed, nor cruel and unusual punishment be inflicted.

- 8 SECTION 7. In all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his behalf; and in prosecutions by indictment or information, to a speedy public trial by an impartial jury of the county or district where-

in the offense shall have been committed; which county or district shall have been previously ascertained by law.

9 SECTION 8. (As amended Nov. 8, 1870.) No person shall be held to answer for a criminal offense without due process of law, and no person for the same offense shall be put twice in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself. All persons shall before conviction be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

10 SECTION 9. Every person is entitled to a certain remedy in the laws, for all injuries or wrongs he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws.

11 SECTION 10. Treason against the State shall consist only in levying war against the same, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

12 SECTION 11. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

13 SECTION 12. No bill of attainder, *ex post facto* law, nor any law impairing the obligation of contracts, shall ever be passed; and no conviction shall work corruption of blood or forfeiture of estate.

14 SECTION 13. The property of no person shall be taken for public use without just compensation therefor.

15 SECTION 14. All lands within the State are declared to be allodial, and feudal tenures are prohibited. Leases and grants of agricultural land, for a longer term than fifteen years, in which rent or service of any kind shall be reserved, and all fines and like restraints upon alienation, reserved in any grant of land hereafter made, are declared to be void.

16 SECTION 15. No distinction shall ever be made by law between resident aliens and citizens, in reference to the possession, enjoyment, or descent of property.

17 SECTION 16. No person shall be imprisoned for debt arising out of, or founded on a contract, expressed or implied.

18 SECTION 17. The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale for the payment of any debt or liability hereafter contracted.

19 SECTION 18. The right of every man to worship Almighty God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent. Nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishments or

mode of worship Nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.

20 SECTION 19. No religious tests shall ever be required as a qualification for any office of public trust, under the State, and no person shall be rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion.

21 SECTION 20. The military shall be in strict subordination to the civil power.

22 SECTION 21. Writs of error shall never be prohibited by law.

23 SECTION 22. The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.

## ARTICLE II

### BOUNDARIES

24 SECTION 1. It is hereby ordained and declared that the State of Wisconsin doth consent and accept of the boundaries prescribed in the act of Congress entitled "an act to enable the people of Wisconsin Territory to form a Constitution and State Government, and for the admission of such State into the Union;" approved August sixth, one thousand eight hundred and forty-six, to wit: beginning at the northeast corner of the State of Illinois, that is to say, at a point in the center of Lake Michigan where the line of forty-two degrees and thirty minutes of north latitude crosses the same; thence, running with the boundary of the State of Michigan, through Lake Michigan, Green Bay, to the mouth of the Menomonee river; thence up the channel of the said river to the Brule river; thence up said last mentioned river to Lake Brule; thence along the southern shore of Lake Brule, in a direct line to the center of the channel between Middle and South Islands, in the Lake of the Desert; thence in a direct line to the head waters of the Montreal river, as marked upon the survey made by Captain Cram; thence down the main channel of the Montreal river to the middle of Lake Superior; thence through the center of lake Superior to the mouth of the St. Louis river; thence up the main channel of said river to the first rapids in the same, above the Indian village, according to Nicollet's map; thence due south to the main branch of the river St. Croix; thence down the main channel of said river to the Mississippi; thence down the center of the main channel of that river to the northwest corner of the State of Illinois; thence due east with the northern boundary of the State of Illinois, to the place of beginning. \* \* \* \*

25 SECTION 2. The propositions contained in the act of Congress are hereby accepted, ratified and confirmed, and shall remain irrevocable without the consent of the United States; and it is hereby ordained that this State shall never interfere with the primary disposition of the soil within the same, by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to *bona fide* purchasers thereof; and no tax shall be imposed on land the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. *Provided*, That nothing in this Constitution, or in the act of Congress aforesaid, shall in any manner prejudice



or affect the right of the State of Wisconsin to five hundred thousand acres of land granted to said State, and to be hereafter selected and located, by and under the act of Congress, entitled "an act to appropriate the proceeds of sales of the public lands, and grant pre-emption rights," approved September fourth, one thousand eight hundred and forty-one.

### ARTICLE III

#### SUFFRAGE

26 SECTION 1. (As amended Nov. 7, 1882). Every male person of the age of twenty-one years or upwards belonging to either of the following classes who shall have resided within the State for one year next preceding any election, and in the election district where he offers to vote, such time as may be prescribed by the Legislature, not exceeding thirty days, shall be deemed a qualified elector at such election.

1. Citizens of the United States.

2. Persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States on the subject of naturalization.

3. Persons of Indian blood who have once been declared by law of congress to be citizens of the United States, any subsequent law of congress to the contrary notwithstanding.

4. Civilized persons of Indian descent not members of any tribe; *provided*, that the legislature may at any time extend by law the right of suffrage to persons not herein enumerated; but no such law shall be in force until the same shall have been submitted to a vote of the people at a general election and approved by a majority of all the votes cast at such election; *and provided further*, that in incorporated cities and villages, the legislature may provide for the registration of electors and prescribe proper rules and regulations therefor.

27 SECTION 2. No person under guardianship, *non compos mentis*, or insane, shall be qualified to vote at any election; nor shall any person convicted of treason or felony be qualified to vote at any election unless restored to civil rights.

28 SECTION 3. All votes shall be given by ballot, except for such township officers as may by law be directed or allowed to be otherwise chosen.

29 SECTION 4. No person shall be deemed to have lost his residence in this State by reason of his absence on business of the United States, or of this State.

30 SECTION 5. No soldier, seaman, or marine, in the army or navy of the United States shall be deemed a resident of this State in consequence of being stationed within the same.

31 SECTION 6. Laws may be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery or larceny, or of any infamous crime, and depriving every person who shall make, or become directly or indirectly interested in, any bet or wager depending upon the result of any election, from the right to vote at such election.



## ARTICLE IV

## LEGISLATIVE

32 SECTION 1. The legislative power shall be vested in a Senate and Assembly.

33 SECTION 2. The number of the members of the Assembly shall never be less than fifty-four, nor more than one hundred. The Senate shall consist of a number not more than one-third, nor less than one-fourth, of the number of the members of the Assembly.

34 SECTION 3. The Legislature shall provide by law for an enumeration of the inhabitants of the State, in the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and at their first session after such enumeration, and also after each enumeration made by the authority of the United States, the Legislature shall apportion and district anew the members of the Senate and Assembly, according to the number of inhabitants, excluding Indians not taxed, and soldiers and officers of the United States army and navy.

35 SECTION 4. (As amended Nov. 8, 1881.) The members of the Assembly shall be chosen biennially, by single districts on the Tuesday succeeding the first Monday of November after the adoption of this amendment, by the qualified electors of the several districts; such districts to be bounded by county, precinct, town or ward lines, to consist of contiguous territory, and be in as compact form as practicable.

36 SECTION 5. (As amended Nov. 8, 1881.) The senators shall be elected by single districts of convenient contiguous territory, at the same time, and in the same manner as members of the assembly are required to be chosen, and no assembly district shall be divided in the formation of a senate district. The senate districts shall be numbered in the regular series, and the senators shall be chosen alternately from the odd and even numbered districts. The senators elected, or holding over at the time of the adoption of this amendment, shall continue in office till their successors are duly elected and qualified; and after the adoption of this amendment, all senators shall be chosen for the term of four years.

37 SECTION 6. No person shall be eligible to the Legislature who shall not have resided one year within the State, and be a qualified elector in the district which he may be chosen to represent.

38 SECTION 7. Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day and may compel the attendance of absent members, in such manner and under such penalties as each House may provide.

39 SECTION 8. Each House may determine the rules of its own proceedings, punish for contempt and disorderly behavior, and with the concurrence of two-thirds of all the members elected, expel a member; but no member shall be expelled a second time for the same cause.

40 SECTION 9. Each House shall choose its own officers, and the Senate shall choose a temporary President, when the Lieutenant Governor shall not attend as President, or shall act as Governor.

41 SECTION 10. Each House shall keep a journal of its proceedings, and  
publish the same, except such parts as require secrecy. The doors of  
each House shall be kept open except when the public welfare shall  
require secrecy. Neither House shall, without the consent of the  
other, adjourn for more than three days.

42 SECTION 11. (As amended Nov. 8, 1881.) The legislature shall meet  
at the seat of government at such times as shall be provided by law,  
once in two years and no oftener, unless convened by the governor in  
special session, and when so convened no business shall be transacted  
except as shall be necessary to accomplish the special purposes for  
which it was convened.

43 SECTION 12. No member of the Legislature shall, during the term for  
which he was elected, be appointed or elected to any civil office in the  
State which shall have been created, or the emoluments of which shall  
have been increased, during the term for which he was elected.

44 SECTION 13. No person being a member of Congress, or holding any  
military or civil office under the United States, shall be eligible to a  
seat in the Legislature; and if any person shall, after his election as a  
member of the Legislature, be elected to Congress, or be appointed to  
any office, civil or military, under the Government of the United States,  
his acceptance thereof shall vacate his seat.

45 SECTION 14. The Governor shall issue writs of election to fill such  
vacancies as may occur in either House of the Legislature.

46 SECTION 15. Members of the Legislature shall, in all cases except  
treason, felony, and breach of the peace, be privileged from arrest; nor  
shall they be subject to any civil process, during the session of the  
Legislature, nor for fifteen days next before the commencement and  
after the termination of each session.

47 SECTION 16. No member of the Legislature shall be liable in any  
civil action or criminal prosecution whatever, for words spoken in  
debate.

48 SECTION 17. The style of the laws of the State shall be, "The people  
of the State of Wisconsin, represented in Senate and Assembly, do  
enact as follows," and no law shall be enacted except by bill.

49 SECTION 18. No private or local bill, which may be passed by the  
Legislature, shall embrace more than one subject, and that shall be  
expressed in the title.

50 SECTION 19. Any bill may originate in either House of the Legislature;  
and a bill passed by one House may be amended by the other.

51 SECTION 20. The yeas and nays of the members of either House, on  
any question, shall, at the request of one-sixth of those present, be  
entered on the journal.

52 SECTION 21. (As amended Nov. 8, 1881.) Each member of the Legis-  
lature shall receive for his services, for and during a regular session,  
the sum of five hundred dollars, and ten cents for every mile he shall  
travel in going to and returning from the place of meeting of the Legis-  
lature on the most usual route. In case of an extra session of the  
Legislature, no additional compensation shall be allowed to any member  
thereof, either directly or indirectly, except for mileage, to be com-  
puted at the same rate as for a regular session. No stationery, news-  
papers, postage or other perquisite, except the salary and mileage

above provided, shall be received from the state by any member of the Legislature for his services, or in any other manner as such member.

53 SECTION 22. The Legislature may confer upon the Board of Supervisors of the several counties of the State, such powers, of a local, legislative, and administrative character, as they shall from time to time prescribe.

54 SECTION 23. The Legislature shall establish but one system of town and county government, which shall be as nearly uniform as practicable.

55 SECTION 24. The Legislature shall never authorize any lottery, or grant any divorce.

56 SECTION 25. The Legislature shall provide by law that all stationery required for the use of the State, and all printing authorized and required by them to be done for their use, or for the State, shall be let by contract to the lowest bidder; but the Legislature may establish a maximum price. No member of the Legislature, or other State officer, shall be interested, either directly or indirectly, in any such contract.

57 SECTION 26. The Legislature shall never grant any extra compensation to any public officer, agent, servant, or contractor, after the service shall have been rendered or the contract entered into. Nor shall the compensation of any public officer be increased or diminished during his term of office.

58 SECTION 27. The Legislature shall direct by law in what manner and in what court suit may be brought against the State.

59 SECTION 28. Members of the Legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe an oath or affirmation to support the Constitution of the United States, and the Constitution of the State of Wisconsin, and faithfully to discharge the duties of their respective offices to the best of their ability.

60 SECTION 29. The Legislature shall determine what persons shall constitute the militia of the State, and may provide for organizing and disciplining the same, in such manner as shall be prescribed by law.

61 SECTION 30. In all elections to be made by the Legislature, the members thereof shall vote *viva voce*, and their votes shall be entered on the journal.

62 SECTION 31. (Added Nov. 7, 1871, the word city inserted in 9th subdivision, Nov. 8, 1892.) The Legislature is prohibited from enacting any special or private laws in the following cases: 1st. For changing the name of persons or constituting one person the heir-at-law of another. 2d. For laying out, opening or altering highways, except in cases of State roads extending into more than one county, and military roads to aid in the construction of which lands may be granted by Congress. 3d. For authorizing persons to keep ferries across streams, at points wholly within this State. 4th. For authorizing the sale or mortgage of real or personal property of minors or others under disability. 5th. For locating or changing any county seat. 6th. For assessment or collection of taxes or for extending the time for collection thereof. 7th. For granting corporate powers or privileges, except to cities. 8th. For authorizing the apportionment of any part of the school fund. 9th. For

incorporating any city, town or village, or to amend the charter thereof.

- 63 SECTION 32. (Added Nov. 7, 1871.) The Legislature shall provide general laws for the transaction of any business that may be prohibited by section thirty-one of this article, and all such laws shall be uniform in their operations throughout the State.

## ARTICLE V

### EXECUTIVE

- 64 SECTION 1. The executive power shall be vested in a Governor who shall hold his office for two years. A Lieutenant Governor shall be elected at the same time, and for the same term.

- 65 SECTION 2. No person, except a citizen of the United States, and a qualified elector of the State shall be eligible to the office of Governor or Lieutenant Governor.

- 66 SECTION 3. The Governor and Lieutenant Governor shall be elected by the qualified electors of the State at the times and places of choosing members of the Legislature. The persons respectively having the highest number of votes for Governor and Lieutenant Governor shall be elected. But in case two or more shall have an equal and the highest number of votes for Governor or Lieutenant Governor, the two Houses of the Legislature, at its next annual session, shall forthwith, by joint ballot, choose one of the persons so having an equal and the highest number of votes for Governor or Lieutenant Governor. The returns of election for Governor and Lieutenant Governor shall be made in such manner as shall be provided by law.

- 67 SECTION 4. The Governor shall be Commander-in-Chief of the military and naval forces of the State. He shall have the power to convene the Legislature on extraordinary occasions; and in case of invasion, or danger from the prevalence of contagious disease at the seat of the Government, he may convene them at any other suitable place within the State. He shall communicate to the Legislature, at every session, the condition of the State, and recommend such matter to them for their consideration, as he may deem expedient. He shall transact all necessary business with the officers of the Government, civil and military. He shall expedite all such measures, as may be resolved upon by the Legislature, and shall take care that the laws be faithfully executed.

- 68 SECTION 5. (As amended Nov. 2, 1869.) The Governor shall receive during his continuance in office, an annual compensation of five thousand dollars, which shall be in full for all traveling or other expenses incident to his duties.

- 69 SECTION 6. The Governor shall have power to grant reprieves, commutations, and pardons, after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have the power to suspend the execution of the sentence until the case shall be reported to the Legislature, at its next meeting, when the Legislature shall either pardon, or commute the sentence, direct the execution of the sentence



or grant a further reprieve. He shall annually communicate to the Legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon, or reprieve, with his reasons for granting the same.

70 SECTION 7. In case of the impeachment of the Governor, or his removal from office, death, inability from mental or physical disease, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant Governor, for the residue of the term, or until the Governor, absent or impeached, shall have returned, or the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of the military force thereof, he shall continue Commander-in-Chief of the military force of the State.

71 SECTION 8. The Lieutenant Governor shall be President of the Senate, but shall have only a casting vote therein. If, during a vacancy in the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign, die, or from mental or physical disease become incapable of performing the duties of his office, or be absent from the State, the Secretary of State shall act as Governor until the vacancy shall be filled, or the disability shall cease.

72 SECTION 9. (As amended Nov. 2, 1869.) The Lieutenant Governor shall receive during his continuance in office, an annual compensation of one thousand dollars.

73 SECTION 10. Every bill which shall have passed the Legislature shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large upon the journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objections to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the Legislature shall, by their adjournment, prevent its return; in which case it shall not be a law.

## ARTICLE VI

### ADMINISTRATIVE

74 SECTION 1. There shall be chosen by the qualified electors of the State, at the times and places of choosing the members of the Legislature, a Secretary of State, Treasurer, and Attorney-General, who shall severally hold their offices for the term of two years.

75 SECTION 2. The Secretary of State shall keep a fair record of the official acts of the Legislature and Executive Department of the State, and shall, when required, lay the same and all matters relative thereto

before either branch of the Legislature. He shall be *ex officio* auditor, and shall perform such other duties as shall be assigned him by law. He shall receive as a compensation for his services, yearly, such sum as shall be provided by law, and shall keep his office at the seat of government.

76 SECTION 3. The powers, duties and compensation of the Treasurer and Attorney-General shall be prescribed by law.

77 SECTION 4. (As amended Nov. 7, 1882). Sheriffs, coroners, registers of deeds, district attorneys, and all other county officers, except judicial officers, shall be chosen by the electors of the respective counties, once in every two years. Sheriffs shall hold no other office, and be ineligible for two years next succeeding the termination of their offices; they may be required by law to renew their security from time to time, and in default of giving such new security their offices shall be deemed vacant, but the county shall never be made responsible for the acts of the sheriff. The Governor may remove any officer in this section mentioned, giving to such a copy of the charges against him and an opportunity of being heard in his defense. All vacancies shall be filled by appointment, and the person appointed to fill a vacancy shall hold only for the unexpired portion of the term to which he shall be appointed and until his successor shall be elected and qualified.

## ARTICLE VII

### JUDICIARY

78 SECTION 1. The court for the trial of impeachments shall be composed of the Senate. The House of Representatives shall have the power of impeaching all civil officers of this State, for corrupt conduct in office, or for crimes and misdemeanors; but a majority of all the members elected shall concur in an impeachment. On the trial of an impeachment against the Governor, the Lieutenant Governor shall not act as a member of the court. No judicial officer shall exercise his office after he shall have been impeached, until his acquittal. Before the trial of an impeachment, the members of the court shall take an oath or affirmation truly and impartially to try the impeachment, according to evidence; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold any office of honor, profit or trust, under the State; but the party impeached shall be liable to indictment, trial and punishment according to law.

79 SECTION 2. The judicial power of this State, both as to matters of law and equity, shall be vested in a Supreme Court, Circuit Courts, Courts of Probate, and in Justices of the Peace. The Legislature may also vest such jurisdiction as shall be deemed necessary in Municipal Courts and shall have power to establish inferior courts in the several counties, with limited civil and criminal jurisdiction. *Provided*, that the jurisdiction which may be vested in Municipal Courts shall not exceed, in their respective municipalities, that of Circuit Courts in their respective circuits, as prescribed in this Constitution; and that the Legislature shall provide as well for the election of judges of the Municipal Courts as of



the judges of inferior Courts, by the qualified electors of the respective jurisdictions. The term of office of the judges of the said Municipal and inferior courts shall not be longer than that of the judges of the Circuit Courts.

80 SECTION 3. The Supreme Court, except in cases otherwise provided in this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State; but in no case removed to the Supreme Court, shall a trial by jury be allowed. The Supreme Court shall have a general superintending control over all inferior courts; it shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari and other original and remedial writs, and to hear and determine the same.

81 SECTION 4. (As amended Nov. 7, 1882.) The supreme court shall consist of one chief justice and four associate justices, to be elected by the qualified electors of the State. The Legislature shall, at its first session after the adoption of this amendment, provide by law for the election of two associate justices of said court, to hold their offices for terms ending two and four years respectively, after the end of the term of the justice of the said court then last to expire. And thereafter the chief justice and associate justices of the said court shall be elected and hold their offices respectively for the term of ten years.

82 SECTION 4. (As amended April 2, 1892.) The chief justice and associate justices of the supreme court shall be severally known as justices of said court with the same terms of office, respectively, as now provided. The supreme court shall consist of five justices (any three of whom shall be a quorum), to be elected as now provided. The justice having been longest a continuous member of the court (or in case of two or more of such senior justices having served for the same length of time, then the one whose commission first expires), shall be ex-officio the chief justice.

83 SECTION 5. (*Provides for first division of the State into judicial districts.*)

84 SECTION 6. The Legislature may alter the limits, or increase the number of circuits, making them as compact and convenient as practicable, and bounding them by county lines, but no such alteration or increase shall have the effect to remove a judge from office. In case of an increase of circuits, the judge or judges shall be elected as provided in this Constitution, and receive a salary not less than that herein provided for judges of the Circuit Court.

85 SECTION 7. For each circuit there shall be a judge chosen by the qualified electors therein, who shall hold his office as is provided in this Constitution, and until his successor shall be chosen and qualified; and after he shall have been elected, he shall reside in the circuit for which he was elected. \* \* \*

86 SECTION 8. The Circuit Courts shall have original jurisdiction in all matters, civil and criminal, within this State, not excepted in this Constitution, and not hereafter prohibited by law, and appellate jurisdiction from all inferior courts and tribunals, and a supervisory control over the same. They shall also have the power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and all other writs necessary to carry into effect their orders, judgments and de-

crees, and give them a general control over inferior courts and jurisdictions.

87 SECTION 9. When a vacancy shall happen in the office of Judge of the Supreme or Circuit Courts, such vacancy shall be filled by an appointment of the Governor, which shall continue until a successor is elected and qualified; and when elected, such successor shall hold his office the residue of the unexpired term. There shall be no election for a judge or judges at any general election for State or county officers, nor within thirty days either before or after such election.

88 SECTION 10. Each of the Judges of the Supreme and Circuit Courts shall receive a salary, payable quarterly, of not less than one thousand five hundred dollars annually; they shall receive no fees of office, or other compensation than their salaries; they shall hold no office of public trust, except a judicial office, during the term for which they are respectively elected, and all votes for either of them, for any office except a judicial office given by the Legislature or the people, shall be void. No person shall be eligible to the office of Judge, who shall not, at the time of his election, be a citizen of the United States, and have attained the age of twenty-five years, and be a qualified elector within the jurisdiction for which he may be chosen.

89 SECTION 11. The Supreme Court shall hold at least one term annually, at the seat of government of the State, at such time as shall be provided by law, and the Legislature may provide for holding other terms, and at other places, when they may deem it necessary. A Circuit Court shall be held at least twice in each year, in each county of this State, organized for judicial purposes. The judges of the circuit court may hold courts for each other, and shall do so when required by law.

90 SECTION 12. (As amended Nov. 7, 1882.) There shall be a clerk of the Circuit Court chosen in each county organized for judicial purposes, by the qualified electors thereof, who shall hold his office for two years, subject to removal, as shall be provided by law. In case of a vacancy, the Judge of the Circuit Court shall have power to appoint a clerk, until the vacancy shall be filled by an election. The clerk thus elected or appointed shall give such security as the Legislature may require. The Supreme Court shall appoint its own Clerk, and the Clerk of a Circuit Court may be appointed Clerk of the Supreme Court.

91 SECTION 13. Any Judge of the Supreme or Circuit Court may be removed from office by address of both Houses of the Legislature, if two-thirds of all the members elected to each House concur therein, but no removal shall be made by virtue of this section, unless the judge complained of shall have been served with a copy of the charges against him as the ground of address, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the journals.

92 SECTION 14. There shall be chosen in each county, by the qualified electors thereof, a Judge of Probate, who shall hold his office for two years, and until his successor shall be elected and qualified, and whose jurisdiction, powers and duties shall be prescribed by law. *Provided, however,* That the Legislature shall have power to abolish the office of Judge of Probate in any county, and to confer probate powers upon such inferior courts as may be established in said county.

93 SECTION 15. The electors of the several towns, at their annual town meetings, and the electors of cities and villages, at their charter elections, shall in such manner as the Legislature may direct, elect justices of the peace, whose term of office shall be for two years, and until their successors in office shall be elected and qualified. In case of an election to fill a vacancy occurring before the expiration of a full term, the justice elected shall hold for the residue of the unexpired term. Their number and classifications shall be regulated by law. And the tenure of two years shall in no wise interfere with the classification in the first instance. The justices thus elected shall have such civil and criminal jurisdiction as shall be prescribed by law.

94 SECTION 16. The Legislature shall pass laws for the regulation of tribunals of conciliation, defining their powers and duties. Such tribunals may be established in and for any township, and shall have power to render judgment, to be obligatory on the parties, when they shall voluntarily submit their matter in difference to arbitration, and agree to abide the judgment, or assent thereto in writing.

95 SECTION 17. The style of all writs and process shall be, "The State of Wisconsin." All criminal prosecutions shall be carried on in the name and by the authority of the same; and all indictments shall conclude against the peace and dignity of the State.

96 SECTION 18. The Legislature shall impose a tax on all civil suits commenced or prosecuted in the municipal, inferior, or circuit courts, which shall constitute a fund to be applied toward the payment of the salary of the judges.

97 SECTION 19. The testimony in causes in equity shall be taken in like manner as in cases at law; and the office of master in chancery is hereby prohibited.

98 SECTION 20. Any suitor in any court in this State shall have the right to prosecute or defend his suit either in his own proper person or by an attorney or agent of his choice.

99 SECTION 21. The Legislature shall provide by law for the speedy publication of all statute laws, and of such judicial decisions made within the State, as may be deemed expedient. And no general law shall be in force until published.

100 SECTION 22. The Legislature, at its first session after the adoption of this Constitution, shall provide for the appointment of three commissioners, whose duty it shall be to inquire into, revise, and simplify the rules of practice, pleadings, forms, and proceedings, and arrange a system adapted to the courts of record of this State, and report the same to the Legislature, subject to their modification and adoption; and such commission shall terminate upon the rendering of the report, unless otherwise provided by law.

101 SECTION 23. The Legislature may provide for the appointment of one or more persons in each organized county, and may vest in such persons such judicial powers as shall be prescribed by law. *Provided*, That said power shall not exceed that of a judge of the Circuit Court at chambers.

## ARTICLE VIII

## FINANCE

102 SECTION 1. The rule of taxation shall be uniform, and taxes shall be  
levied upon such property as the Legislature shall prescribe.

103 SECTION 2. (As amended Nov. 6, 1877.) No money shall be paid out of  
the treasury, except in pursuance of an appropriation by law. No  
appropriation shall be made for the payment of any claim against the  
State, except claims of the United States, and judgments, unless filed  
within six years after the claim accrued.

104 SECTION 3. The credit of the State shall never be given or loaned in  
aid of any individual, association, or corporation.

105 SECTION 4. The State shall never contract any public debt, except in  
the cases and manner herein provided.

106 SECTION 5. The Legislature shall provide for an annual tax sufficient  
to defray the estimated expenses of the State for each year; and  
whenever the expenses of any year shall exceed the income, the Legis-  
lature shall provide for levying a tax for the ensuing year, sufficient,  
with other sources of income, to pay the deficiency, as well as the esti-  
mated expenses of such ensuing year.

107 SECTION 6. For the purpose of defraying extraordinary expenditures,  
the State may contract public debts; but such debts shall never, in the  
aggregate, exceed one hundred thousand dollars. Every such debt  
shall be authorized by law, for some purpose or purposes to be dis-  
tinctly specified therein; and the vote of a majority of all the members  
elected to each house, to be taken by yeas and nays, shall be necessary  
to the passage of such law; and every such law shall provide for levy-  
ing an annual tax sufficient to pay the annual interest of such debt, and  
the principal within five years from the passage of such law, and shall  
specially appropriate the proceeds of such taxes to the payment of such  
principal and interest; and such appropriation shall not be repealed,  
nor the taxes be postponed or diminished, until the principal and inter-  
est of such debt shall have been wholly paid.

108 SECTION 7. The Legislature may also borrow money to repel invasion,  
suppress insurrection, or defend the State in time of war; but the  
money thus raised shall be applied exclusively to the object for which  
the loan was authorized, or to the repayment of the debt thereby  
created.

109 SECTION 8. On the passage in either house of the Legislature, of any  
law which imposes, continues or renews a tax, or creates a debt or  
charge, or makes, continues or renews an appropriation of public or  
trust money, or releases, discharges or commutes a claim or demand of  
the State, the question shall be taken by yeas and nays, which shall be  
duly entered on the journal; and three-fifths of all the members elected  
to such house, shall in all such cases be required to constitute a quorum  
therein.

110 SECTION 9. No scrip, certificate or other evidence of State debt what-  
soever, shall be issued, except for such debts as are authorized by the  
sixth and seventh sections of this article.



- 111 SECTION 10. The State shall never contract any debt for works of internal improvement, or be a party in carrying on such works; but whenever grants of land or other property shall have been made to the State, especially dedicated by the grant to particular works of internal improvement, the State may carry on such particular works, and shall devote thereto the avails of such grants, and may pledge or appropriate the revenues derived from such works in aid of their completion.

## ARTICLE IX

## EMINENT DOMAIN AND PROPERTY OF THE STATE

- 112 SECTION 1. The State shall have concurrent jurisdiction on all rivers and lakes bordering on this State, so far as such rivers or lakes shall form a common boundary to the State, and any other State or Territory now or hereafter to be formed and bounded by the same. And the river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the State as to the citizens of the United States, without any tax, impost, or duty therefor.
- 113 SECTION 2 The title of all lands and other property, which have accrued to the Territory of Wisconsin, by grant, gift, purchase, forfeiture, escheat or otherwise, shall vest in the State of Wisconsin.
- 114 SECTION 3. The people of the State, in their right of sovereignty, are declared to possess the ultimate property in and to all lands within the jurisdiction of the State; and all lands, the title to which shall fail from a defect of heirs, shall revert or escheat to the people.

## ARTICLE X

## EDUCATION

- 115 SECTION 1. The supervision of public instruction shall be vested in a State Superintendent, and such other officers as the Legislature shall direct. The State Superintendent shall be chosen by the qualified electors of the State, in such manner as the Legislature shall provide; his powers, duties and compensation shall be prescribed by law. *Provided*, That his compensation shall not exceed the sum of twelve hundred dollars annually.\*
- 116 SECTION 2. The proceeds of all lands that have been or hereafter may be granted by the United States to this State, for educational purposes (except the lands heretofore granted for the purposes of a University), and all moneys, and the clear proceeds of all property, that may accrue to the State by forfeiture or escheat, and all moneys which may be paid as an equivalent for exemption from military duty, and the clear proceeds of all fines collected in the several counties for any breach of the penal laws, and all moneys arising from any grant to the State where the purposes of such grant are not specified, and the five hundred thousand acres of land to which the State is entitled by

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\* An amendment striking out the last provision goes before the people at the general election of 1896. The Legislature of 1895 has fixed the salary at \$3,000, conditioned upon the passage of the amendment.

the provisions of an act of Congress, entitled "an act to appropriate the proceeds of the sale of public lands, and to grant pre-emption rights," approved the fourth day of September, one thousand eight hundred and forty-one, and also the five *per centum* of the net proceeds of the public lands to which the State shall become entitled on her admission into the Union (if Congress shall consent to such appropriation of the two grants last mentioned), shall be set apart as a separate fund to be called the school fund, the interest of which, and all other revenues derived from the school lands, shall be exclusively applied to the following objects, to wit :

1. To the support and maintenance of common schools in each school district, and the purchase of suitable libraries and apparatus therefor.

2. The residue shall be appropriated to the support and maintenance of academies and normal schools, and suitable libraries and apparatus therefor.

117 SECTION 3. The Legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable, and such schools shall be free and without charge for tuition to all children between the ages of four and twenty years, and no sectarian instruction shall be allowed therein.

118 SECTION 4. Each town and city shall be required to raise, by tax, annually, for the support of common schools therein, a sum not less than one-half the amount received by such town or city respectively for school purposes, from the income of the school fund.

119 SECTION 5. Provision shall be made by law for the distribution of the income of the school fund among the several towns and cities of the State, for the support of common schools therein, in some just proportion to the number of children and youth resident therein, between the ages of four and twenty years, and no appropriation shall be made from the school fund to any city or town for the year in which said city or town shall fail to raise such tax, nor to any school district for the year in which a school shall not be maintained at least three months.

120 SECTION 6. Provision shall be made by law for the establishment of a State University, at or near the seat of State Government, and for connecting with the same from time to time, such colleges in different parts of the State, as the interests of education may require. The proceeds of all lands that have been or may hereafter be granted by the United States to the State for the support of a University, shall be and remain a perpetual fund to be called the "University Fund," the interest of which shall be appropriated to the support of the State University, and no sectarian instruction shall be allowed in such University.

121 SECTION 7. The Secretary of State, Treasurer and Attorney General shall constitute a Board of Commissioners for the sale of the School and University Lands and for the investment of the funds arising therefrom. Any two of said Commissioners shall be a quorum for the transaction of all business pertaining to the duties of their office.

122 SECTION 8. Provisions shall be made by law for the sale of all School and University Lands, after they shall have been appraised, and when any portion of such lands shall be sold, and the purchase money shall not be paid at the time of the sale, the Commissioners shall take security by mortgage upon the land sold for the sum remaining unpaid, with



seven per cent. interest thereon, payable annually at the office of the Treasurer. The Commissioners shall be authorized to execute a good and sufficient conveyance to all purchasers of such lands, and to discharge any mortgages taken as security, when the sum due thereon shall have been paid. The Commissioners shall have power to withhold from sale any portion of such lands when they shall deem it expedient, and shall invest all moneys arising from the sale of such lands, as well as all other University and School funds, in such manner as the Legislature shall provide, and shall give such security for the faithful performance of their duties as may be required by law.

## ARTICLE XI

## CORPORATIONS

123 SECTION 1. Corporations without banking powers or privileges may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. All general laws or special acts enacted under the provisions of this section may be altered or repealed by the Legislature at any time after their passage.

124 SECTION 2. No municipal corporation shall take private property for public use against the consent of the owner, without the necessity thereof being first established by the verdict of a jury.

125 SECTION 3. (As amended Nov. 3, 1874.) It shall be the duty of the Legislature, and they are hereby empowered to provide for the organization of cities and incorporate villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and taxation, and in contracting debts by such municipal corporations. No county, city, town, village, school district, or other municipal corporation, shall be allowed to become indebted in any manner or for any purpose, to any amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness. Any county, city, town, village, school district, or other municipal corporation, incurring any indebtedness as aforesaid, shall before or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on said debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same.

126 SECTION 4. The Legislature shall not have power to create, authorize, or incorporate, by any general or special law, any bank or banking power or privilege, or any institution or corporation, having any banking power or privilege whatever, except as provided in this article.

127 SECTION 5. The Legislature may submit to the voters at any general election, the question of "bank or no bank," and if at any such election a number of votes equal to a majority of all the votes cast at such election on that subject shall be in favor of banks, then the Legislature shall have power to grant bank charters, or to pass a general

banking law, with such restrictions, and under such regulations as they may deem expedient and proper for the security of the bill holders. *Provided*, That no such grant or law shall have any force or effect until the same shall have been submitted to a vote of the electors of the State at some general election, and been approved by a majority of the votes cast on that subject at such election.

## ARTICLE XII

### AMENDMENTS

128 SECTION 1. Any amendment or amendments to this Constitution may be proposed in either House of the Legislature and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election, and shall be published for three months previous to the time of holding such election. And if in the Legislature so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe, and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become part of the Constitution. *Provided*, that if more than one amendment be submitted, they shall be submitted in such manner that the people may vote for or against such amendments separately.

129 SECTION 2. If at any time a majority of the Senate and Assembly shall deem it necessary to call a convention to revise or change this Constitution, they shall recommend to the electors to vote for or against a convention at the next election for members of the Legislature; and if it shall appear that a majority of the electors voting thereon have voted for a convention, the Legislature shall at its next session, provide for calling such convention.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

130 SECTION 1. (As amended Nov. 7, 1882.) The political year for the State of Wisconsin shall commence on the first Monday in January in each year, and the general elections shall be holden on the Tuesday next succeeding the first Monday in November. The first general election for all state and county officers, except judicial officers, after the adoption of this amendment, shall be holden in the year A. D. 1884, and thereafter the general election shall be held biennially. All state, county or other officers elected at the general election in the year 1881, and whose term of office would otherwise expire on the first Monday of January in the year 1884, shall hold and continue in such office respectively, until the first Monday in January in the year 1885.

131 SECTION 2. Any inhabitant of this State who may hereafter be engaged, either directly or indirectly, in a duel, either as principal or accessory, shall forever be disqualified as an elector, and from holding any office under the Constitution and laws of this State, and may be punished in such other manner as shall be prescribed by law.

132 SECTION 3. No Member of Congress, nor any person holding any office of profit or trust under the United States (postmasters excepted), or under any foreign power; no person convicted of any infamous crime in any court within the United States, and no person being a defaulter to the United States, or to this State, or to any county or town therein, or to any State or Territory within the United States, shall be eligible to any office of trust, profit or honor in this State.

133 SECTION 4. It shall be the duty of the Legislature to provide a great seal for the State, which shall be kept by the Secretary of State; and all official acts of the Governor, his approbation of the laws excepted, shall be thereby authenticated.

134 SECTION 5. All persons residing upon Indian lands within any county of the State, and qualified to exercise the right of suffrage under this Constitution, shall be entitled to vote at the polls which may be held nearest their residence for State, United States or County officers. *Provided*, that no person shall vote for county officers out of the county in which he resides.

135 SECTION 6. The elective officers of the Legislature, other than the presiding officers, shall be a Chief Clerk and a Sergeant-at-arms, to be elected by each house.

136 SECTION 7. No county with an area of nine hundred square miles or less, shall be divided or have any part stricken therefrom, without submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county voting on the question shall vote for the same.

137 SECTION 8. No county seat shall be removed until the point to which it is proposed to be removed, shall be fixed by law, and a majority of the voters of the county voting on the question, shall have voted in favor of its removal to such point.

138 SECTION 9. All county officers whose election or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties, or appointed by the boards of supervisors, or other county authorities as the Legislature shall direct. All city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the Legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed as the Legislature may direct.

139 SECTION 10. The Legislature may declare the cases in which any office shall be deemed vacant, and also the manner of filling the vacancy where no provision is made for that purpose in this Constitution.

## ARTICLE XVI

## SCHEDULE

140

[This article provides for the change from the territorial form of government to the state form. It makes the first apportionment into senate and assembly districts. It declares such parts of the common law, then in force in the Territory of Wisconsin, not inconsistent with the Constitution, to be still in force in the State of Wisconsin.]

## CHAPTER IV.—PREAMBLE AND DECLARATION OF RIGHTS

*The figures in parentheses refer to the numbers of the paragraphs of the constitution. The letters Y. C. B. refer to Young's Government Class Book.*

**1. Preamble**—The preamble is adapted from the preamble of the United States constitution. It provides for a better government than the territorial form, which the constitution superseded. It declares that the constitution is made by the people of the State. It recognizes Almighty God and devoutly expresses gratitude to Him (1). There is no recognition of God in the United States constitution.

**2. Inherent Rights ; Object of Governments ; Source of Powers**—The first article of the constitution is a declaration of rights. It opens with a quotation, slightly altered from the Declaration of Independence (2). We have heard it so often, it has lost most of its meaning to us. Still, the declaration, that all governments derive their just powers from the consent of the governed, and that governments are instituted among men to secure their inherent rights are lofty ideals of the source and ends of government, well worth pondering deeply.

**2. Slavery Forbidden.**—The second section is taken from the Ordinance of 1787, and is one of its noblest provisions. By it slavery was prohibited long before the thirteenth amendment to the United States constitution prohibited it throughout the United States (Y. C. B., p. 125). It is a historical fact that slave labor was em-



ployed in Wisconsin, in lead mining, and in domestic service, but it was in the early days of the territory, or rather, when Wisconsin was a part of the territory of Michigan. The public sentiment of the State was always opposed to slavery.

**4. Why State Constitution Repeats United States Constitution**—The young student is often puzzled at finding so many of the provisions of the United States constitution repeated substantially, and even word for word, in the constitution of his State. The twenty personal rights enumerated in this article are the great historic rights of Englishmen and their descendants in America. Many of them are as old as Magna Charta. Freedom of speech (4), freedom of the press (4), freedom in religion (19), the rights of assembly (5), the right of petition (5), the right of trial by jury (6), the right of *habeas corpus* (9), security of homes, persons, and papers, against unreasonable searches and seizures (12), immunity from cruel and unusual punishments, or excessive bail (7), the subordination of the military power to the civil power (21),—all these are carefully enumerated and specially guarded in both constitutions. Why in both? Are they not all made secure to the people of the United States by the federal constitution? Yes, and no. They are made secure against interference by the *United States government*. The Supreme Court of the United States has always held, that, in the first ten amendments, and elsewhere in the constitution where these rights are enumerated, the purpose of the people of the United States was simply to prohibit congress from meddling with these rights. The people say to the United States government “Hands off.” But these amendments have no force whatever as against



the State governments (Y. C. B., p. 194). Indeed, it is quite possible for the legislatures of the separate States to pass very unjust and oppressive laws in regard to these rights, unless restrained by their State constitutions. Citizens of the United States, residing in States where such oppressive laws might happen to be in operation, would have no redress in the United States Courts. The people have thought it wise not to give the United States government any jurisdiction whatever, in these matters, and so, the people of Wisconsin enumerate and guard these rights in their constitution, against *State interference*. By *both* constitutions together, these rights are retained by the people and made secure.

**5. Field of State Authority : Field of United States Authority**—The United States government has jurisdiction in United States matters. The State government has jurisdiction in State matters. The State government is not a branch of the United States government in the sense in which the county, city, and town governments are branches of the State government. Each of the two governments is supreme in its own proper sphere. It is true that the United States Constitution, laws, and treaties, are the supreme law of the land. There must be nothing in the State constitution or laws in conflict with the United States Constitution or laws. If there should be, it must give way. We are a nation. The States no longer retain their "sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States in congress assembled," as they did under the articles of confederation. Expressly, and by implication as well, large powers have been surrendered to the United States government.

**6. State Powers**—On the other hand the powers not so surrendered are still more numerous and important. Many of them touch our daily lives very closely,—our family, social, and business interests. These are the powers exercised by the State governments, or held in reserve by the people.

**7. Vastness of State Powers**—The vastness of the powers left to the separate States is not always realized by the ordinary citizen. Woodrow Wilson, in order to show how great these powers are, uses a very striking illustration. He says that the constitutional history of England for eighty years has been connected with the settlement of twelve great questions, which he enumerates. These questions have been settled by the British parliament. Had they arisen in this country before the war, only one of them,—the repeal of the corn laws,—could have been considered by congress. Had they arisen since the war, one other question,—the abolition of slavery,—could have been so considered. All the other ten questions would have been settled by the separate State governments, each in its own way.

**8. Importance of Understanding Relations of State and General Governments**—If the student will get a clear conception of the mutual relations and interplay of the State governments and the United States government, he will understand our system better, and will learn to admire and love it more. This in turn should make him public-spirited, and patriotic,—willing to sacrifice his time and his means, if necessary, for the correction of abuses that have arisen in it, for the maintenance of its efficiency, and for the enlarging and perfecting of it, to meet the needs of our rapidly expanding civilization. “Forward” is our State motto. Wisconsin will be true

to her motto, only so far as her children are intelligent and patriotic.

**9. Rights Already Considered**—Most of the rights enumerated in this article have been already treated adequately (Y. C. B., pp. 193–198). Others require further attention.

**10. Due Process of Law**—In Wisconsin no person can be held to answer for a criminal offense without due process of law (9). For capital and otherwise infamous crimes against the United States, no person can be held to answer, unless on presentment or indictment of a grand jury (Y. C. B., p. 121). Grand juries are very seldom called in Wisconsin. Due process of law is usually a preliminary examination before a justice of the peace followed by an information made to the trial court by the district attorney. The United States have one "Process of Law," Wisconsin has a different process. By section 1 of the fourteenth amendment (Y. C. B., p. 125), the United States are given authority to see that no State shall deprive any person of life, liberty, or property, without due process of law. This does not mean due process of United States law but due process of State law. That is, the United States may insist that the criminal shall be tried as other criminals are tried for the same offense in the State courts.

**11. All Lands Allodial**—All lands in Wisconsin are allodial (15). This means that the owner of a piece of land has absolute dominion over it. He may convey it—that is, sell it—on such terms and conditions as he chooses. A feudal tenure, at first, was the right to hold land, in consideration of military services rendered or pledged, to the proprietor. Later it came to mean any *perpetual* service, or rent. Restraints upon alienation are usually called entails. In some countries, all

the real estate of a family descends by inheritance to the eldest son. It cannot be sold by the owner. It cannot be seized and sold for debt. It must remain in the line of eldest sons, by what is called primogeniture. Feudal tenures, entails, and primogeniture are the foundations of the English aristocracy.

**12. Farming Lands**—Farming lands cannot be rented for a longer term than fifteen years; otherwise the provisions of this section might be frustrated.

**13. Object of Section 15**—The object of this section is to prevent the growth of a landed aristocracy, and to promote the ownership of the soil by those who till it. The United States homestead and pre-emption laws were framed with the same end in view. The policy is profoundly wise. The greater the number of persons owning the soil they till, the smaller the number of anarchists and other enemies of the social system, and, in every way, the more stable the State.

**14. Exemption Laws**—The exemption laws are extremely liberal (18). While it is just and reasonable that the property of the debtor should be seized and sold to pay his debts, it is not good public policy to strip the debtor of the necessary comforts of life, and deprive him of the means of earning a living. His homestead cannot be taken from him—forty acres of land in the country, with all the buildings upon it, or a quarter of an acre in the city. Other exemptions are family wearing apparel, household furniture, libraries, the mechanic's tools, and his stock in trade, not exceeding two hundred dollars in value, two cows, ten swine, one yoke of oxen, and one horse, or mule, or, in lieu of the oxen and the horse, or the oxen and the mule, two horses or two mules, ten sheep and their wool, a year's

provisions and fuel, and many other things, literally too numerous to mention.

## CHAPTER V.—BOUNDARIES

**1. Fixed by the Constitution**—The student should trace out carefully on a good map of the State, the boundaries as fixed in the Constitution (24).

**2. Proposition to Change**—During the session of 1895 the legislature of Minnesota passed a joint-resolution requesting the legislature of Wisconsin to appoint commissioners, to meet a board of commissioners from Minnesota, for the purpose of considering the request of the legislature of Minnesota that an area of about twenty-nine townships in the extreme northwest part of the state be set over into Minnesota. The purpose of the movement is to place the two cities of Duluth and Superior under one government. The Wisconsin commissioners have been appointed, as state comity, seemed to require. They are instructed to report to the next legislature.

**3. Changes: How Made**—In order to effect the change, or any similar change, the mere request of the legislature of Minnesota is not sufficient. The legislature of Wisconsin must consent to the change, and it must then be approved by Congress. We may safely say that no such change will ever meet such consent and approval.

**4. Land Titles: U. S. Lands not Taxed: Uniform Taxation: School Lands**—Section 2 provides that the State shall never interfere with titles to land derived from the United States; that no United States' lands in the state shall be taxed; that the rate of taxation shall be the same for non-residents as for residents. It also claims for the State the five hundred thousand acres



of land granted by the United States, for educational purposes (25).

## CHAPTER VI.—SUFFRAGE

**1. Qualifications of Voters the Same at All Elections**—The provisions in regard to suffrage are extremely liberal (26). The qualifications of voters at elections for presidential electors, members of the House of Representatives and for State and county officers, held regularly on the first Tuesday after the first Monday in November in the even-numbered years ; for judges of the Supreme, Circuit, and County Courts, and for all town officers, held on the first Tuesday in April, annually ; and for school district officers held on the first Monday in July, annually, must all have exactly the same qualifications. The person entitled to vote at any one of these elections is entitled to vote at every one of them. The only exception is, that women have the right to vote at school-meetings.

**2. Who may Vote**—Every voter must have all of these four qualifications :—(a) Male sex ; (b) twenty-one years of age, at least ; (c) one year's residence in the State ; (d) ten days' residence in the election district. Having these qualifications he must belong to some one of the following classes :—(e) Citizens of the United States ; (f) persons of foreign birth who have declared their intention of becoming citizens of the United States in conformity to the national naturalization laws ; (g) persons of Indian blood once declared citizens by congress, notwithstanding any subsequent contrary law of congress ; (h) civilized Indians not belonging to any tribe.

**3. Natives and Foreigners on Same Footing**—It will be



seen that a descendant of one of the original Mayflower pilgrims, coming from Massachusetts, and an emigrant from farthest Russia, are placed upon exactly the same footing. The one must reside in the State a year before he is allowed to vote. So must the other. During the year the Russian must declare his intention.

**4. Chinamen**—The Chinaman is excluded. His race cuts him off from the privileges of class 3 and class 4 (26). The naturalization laws are not open to him. He cannot enter class 2 or class 1 (26). The State has made no special provision for him.

**5. In other States**—In Illinois, Iowa, Kentucky, California, Nevada, Montana, Texas, Maine, Vermont, South Carolina, and some other States, none but United States citizens are allowed to vote. That was the rule, too, in the Territory of Wisconsin. At first thought, it seems like a wise policy for all the States. The foreigner, under that policy, is not able to vote until he has lived at least five years in the United States, and has had a chance to become familiar with our institutions.

**6. Wisconsin's Way Best**—On the other hand, there are many places,—wards in cities and towns in the country,—where the population is almost exclusively of foreign birth. In these places local government must be maintained by the people. They are not at first, qualified for self-government, perhaps. But they will never become qualified through having the right of suffrage denied them. Macaulay has told us that no people ever became worthy of liberty except through the enjoyment of liberty. Wisconsin with an unusually large foreign population, has, from the beginning, frankly entrusted foreigners with the right to vote. The results have vindicated the wisdom of her policy.

**7. Other Privileges of Foreigners**—Not only are persons

who have declared their intention, allowed to vote, but the Supreme Court of the State has declared them to be citizens of the State (See Wis. Reports, *in re* Wehlitz) They are eligible to all town, county, and State offices except governor and lieutenant-governor, and judge of the Supreme Court or of the Circuit Courts. They are exempt from the duty of serving on the grand or the petit jury, both under United States laws and the laws of the State. Enjoying as they do substantially, all the privileges of citizens of the State and of the United States, and being relieved of some of their most irksome duties, it has happened that the number of voters not citizens of the United States, is very large.

**8. Registration**—Wisconsin is one of the States in which voters must be registered in order to be allowed to vote (Y. C. B., p. 30). The registration laws, however, apply only to cities having a population of over three thousand, to incorporated villages, of over fifteen hundred inhabitants, in which by law separate elections are held, to towns containing villages of fifteen hundred inhabitants, provided the villages do not hold separate elections, and all towns, any part of which shall have been embraced in any part of any city or village in which registration is required.

**9. Incapables, Insane Persons, Traitors, Felons**—The suffrage is denied to all persons under guardianship, *non compos mentis*, or insane, and to all traitors and felons (27). An adult may be placed under guardianship on account of incapacity to take care of himself arising from habitual drunkenness or any other cause. The denial of the suffrage to all these classes is simple common-sense. Those incapable of managing themselves are manifestly incapable of helping to manage the State, and enemies of the social order should not help to direct its affairs.

**10. Bribers, Duelists, Betters**—The suffrage is denied, also, to all persons convicted of bribery (31), and to all persons engaged in dueling either as principals or accessories (131). All persons interested directly or indirectly, in any election bet, are deprived of the right to vote at that election (31).

**11. Paupers**—Paupers, as such, are not excluded from the right of suffrage.

**12. Ballots**—All voting must be by ballot with such exceptions, in the case of town officers, as the law may direct or allow (28).

**13. Description of Ballots**—All ballots are provided at public expense. They contain the names of all the candidates of all the parties. The names of the offices for which the candidates are running are plainly indicated, and the names of candidates of the several parties are arranged in separate columns, each set under its proper party name. Just under the party name, there is a little square, and to the right of each separate name there is a similar square.

**14. Manner of Voting**—At the voting place, the ballots are kept in an enclosure, behind a railing, by two officers appointed for that purpose, called ballot clerks. The voter enters the enclosure through a gate and receives a ballot from one of these clerks. He then proceeds to a stall, or booth—one of a number of such, all quite screened from one another. In the booth he finds a pencil and simple printed instructions how to prepare his ballot. If he wishes to vote a straight party ticket—the Republican, for example, he makes a cross (x) in the little square at the head of the column headed “Republican.” By that one cross (x) he votes for every candidate in the column. If he wishes to vote for candidates of different parties he makes a cross (x) at the

right of the name of every candidate for whom he wishes to vote. If he does not wish to vote for any of the candidates named in the ballot, he may write such names as he pleases in blank lines left for that purpose, and place a cross (x) opposite each name. In this way he may vote for a full set of candidates of his own choosing. Having prepared his ballot, he hands it to one of the inspectors of election, giving his name. If he is registered, the inspector drops the ballot into the box, the clerks check off his name on the list and register him in another list, as having voted. He then passes out of the enclosure by another opening and withdraws.

**15. Sample Ballot**—Appended is a fac-simile of the official ballot of the second ward of the city of Whitewater used in the general election held November 8, 1892. It has been modified in size to fit this book.

## CHAPTER VII.—LEGISLATIVE.

**1. Two-chambered**—Like all the other States, and the United States, Wisconsin has a two-chambered legislature (32).\*

**2. Number of Members**—The number of senators is thirty-three, of assemblymen, one hundred—the largest numbers possible under the constitution (33).

**3. State and U. S. Censuses**—In every year ending in

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\* One of the main questions of English politics, at present (July, 1895) is the abolition of the House of Lords. In the United States there has been considerable discussion of the question of abolishing the senate. There was only one chamber under the articles of Confederation. The Confederate States of America had but one. In the building of the new States it is quite probable, that two-chambered legislatures have been retained more in a spirit of conservatism than as the result of any original study of sound principles of government. Still, there are very many weighty arguments in favor of the two chambers.

Secretary of State.....	T. J. CUNNINGHAM.	A. BROUGHTON.....	E. FRED RUSSEL.....	R. W. JACKSON.....
State Treasurer.....	JOHN HUNNER.....	A. MANHEMER.....	J. C. MARTIN.....	ATLEY PETERSON..
Attorney General.....	J. L. O'CONNOR.....	M. W. STEVENS.....	F. A. WATKINS.....	JAMES O'NEILL.....
State Superintendent..	OLIVER E. WELLS..	SARAH POTTER.....	L. W. UNDERWOOD..	W. H. CHANDLER..
Railroad Commissioner	THOS. THOMPSON..	CHARLES HATCH..	JOHN E. CLAYTON..	JOHN D. BULLOCK..
Register of Deeds.....	JOHN MENZIE.....		WANDELL TOPPING	WM. T. TAYLOR.....
County Surveyor.....	JAMES L. TUBBS....		HENRY H. TUBBS...	WILLIAM CHILD....
Supl. of Schools.....	JAMES T. GRIFFEN..		J. G. SKEELS.....	RAY W. TAYLOR....

For the Amendment to Subdivision 9, of Section 31, of Article

IV., of the Constitution.....

Against the Amendment to Subdivision 9, of Section 31, of Article

IV., of the Constitution.....





# SPECIMEN BALLOT

If you desire to vote an entire party ticket, make a cross mark in the ☐ square under party designation at the head of the ballot. If you desire to vote for candidates on different tickets, erase the name of the candidate you do not want to vote for, and make a (X) at the right of the name of the candidate you desire to vote for, or write his name in the blank space under the name erased, or paste such name in the space, or over the name of the person you do not desire to vote for.

	Democratic Ticket. <input type="checkbox"/>	People's Ticket. <input type="checkbox"/>	Prohibition Ticket. <input type="checkbox"/>	Republican Ticket. <input type="checkbox"/>
<b>NATIONAL—</b>				
President.....	G. CLEVELAND.....	J. B. WEAVER.....	JOHN BIDWELL.....	BEN. HARRISON.....
Vice-President.....	A. E. STEVENSON.....	JAMES G. FIELD.....	J. B. CRANFILL.....	WHITELAW REID.....
	GUS. WOLLAEGER.....	PETER HAAAN.....	SOFAS C. MILLER.....	JOHN PRITZLAFF.....
	R. J. MacBRIDE.....	NATHAN E. MOODY.....	W. C. JONES.....	OLE LARSON.....
	ANDREW JENSON.....	G. C. CHAFFEE.....	JOHN C. PLUMB.....	FRED. W. COON.....
	MICHAEL JOHNSON.....	NELSON E. ALLEN.....	OLIVER H. CROWL.....	ELI HAWKS.....
	JOHN M. SMITH.....	SAMUEL SMITH.....	J. H. PENBERTHY.....	SAM. W. REESE.....
	JOHN BLACK.....	A. B. SEVERANCE.....	WILLIAM DRAKE.....	C. S. OTJEN.....
<b>Electors of President and Vice-President of the United States.....</b>	HENRY B. SCHWIN.....	WM. SCHWARTZ.....	J. N. CRAWFORD.....	JOHN F. BRUSS.....
	FERD. T. YAHR.....	G. W. JACKSON.....	J. S. THOMPSON.....	R. L. D. POTTER.....
	JAMES J. HOGAN.....	WM. CAMPBELL.....	W. W. LINK.....	TOSTEN I. GILBERT.....
	JOHN WATTAWA.....	J. W. GODFREY.....	N. H. BROKAW.....	W. H. HATTON.....
	LEWIS S. BAILEY.....	ERNEST PAGEL.....	J. O. LINDHAM.....	E. H. WINCHESTER.....
	WM. F. CIRKEL.....	L. SUTLIFF.....	T. K. THORVILDSSEN.....	JEROME F. COE.....
<b>STATE—</b>				
Governor.....	GEORGE W. PECK.....	CYRUS M. BUTT.....	T. C. RICHMOND.....	JOHN C. SPOONER.....
Lieut. Governor.....	CHARLES JONAS.....	M. PATTISON.....	GILBERT SHEPARD.....	JOHN C. KOCH.....
Secretary of State.....	T. J. CUNNINGHAM.....	A. BROUGHTON.....	E. FRED RUSSEL.....	R. W. JACKSON.....
State Treasurer.....	JOHN HUNNER.....	A. MANHEMER.....	J. C. MARTIN.....	ATLEY PETERSON.....
Attorney General.....	J. L. O'CONNOR.....	M. W. STEVENS.....	F. A. WATKINS.....	JAMES O'NEILL.....
State Superintendent.....	OLIVER E. WELLS.....	SARAH POTTER.....	L. W. UNDERWOOD.....	W. H. CHANDLER.....
Railroad Commissioner.....	THOS. THOMPSON.....	CHARLES HATCH.....	JOHN E. CLAYTON.....	JOHN D. BULLOCK.....
Commissioner of Insurance.....	WILBER M. ROOT.....	EUGENE LOW.....	OLE A. RITAN.....	JAMES E. HEG.....
<b>CONGRESSIONAL—</b>				
Member of Congress— 1st District.....	CLINTON BABBITT.....		J. C. MURDOCK.....	HENRY A. COOPER.....
<b>LEGISLATURE—</b>				
State Senator—24th District.....	ARCH. WOODARD.....		J. H. GOULD.....	T. D. WEEKS.....
Member of Assembly— 1st District.....	AUGUST WILMER.....		A. D. WHITMORE.....	FRANK L. FRASER.....
<b>COUNTY—</b>				
County Clerk.....	E. C. HUBBARD.....		C. E. BADGER.....	DYAR L. COWDERY.....
Treasurer.....	E. VON SUSSMILCH.....		HURON I. HAWKS.....	WM. E. CLOUGH.....
Sheriff.....	JAMES CLEARY.....		S. FORREST, Sr.....	L. G. FOSTER.....
Coroner.....	CHARLES WALES.....		CHARLES R. TREAT.....	CHARLES L. LYON.....
Clerk of the Circuit Court.....	GEO. MATHESON.....		WILL M. COWLES.....	ELY B. DEWING.....
District Attorney.....	EDWIN T. CASS.....		A. S. SPOONER.....	C. B. SUMNER.....
Register of Deeds.....	JOHN MENZIE.....		WANDELL TOPPING.....	WM. T. TAYLOR.....
County Surveyor.....	JAMES L. TUBBS.....		HENRY H. TUBBS.....	WILLIAM CHILD.....
Supt. of Schools.....	JAMES T. ORIPPEN.....		J. G. SKEELS.....	RAY W. TAYLOR.....

For the Amendment to Subdivision 9, of Section 31, of Article IV., of the Constitution.....

Against the Amendment to Subdivision 9, of Section 31, of Article IV., of the Constitution.....



0, a census is taken by United States authority. In every year ending in 5 a census is taken by State authority. At the first session after a census is taken, the legislature is required to district the State into Senate and Assembly districts (34). There is, therefore, an apportionment every five years.

**4. Directions for Apportioning**—The constitution provides that these districts shall be made according to population (34); that the boundaries of assembly districts shall be county, precinct, town, or ward lines (35); that no assembly districts shall be divided in making senate districts (35); that districts shall be of contiguous territory (35).

**5. Unconstitutional Apportionments**—It is doubtful if there has ever been a constitutional apportionment in the history of the State. Gerrymandering has been done by both the political parties that have had control of the State legislature, and with pretty nearly equal skill.

**6. Decision of Supreme Court**—The apportionment made by the legislature of 1891 was set aside by the Supreme Court as unconstitutional. A second apportionment made by the same legislature at a special session, met the same fate. The present apportionment was made at a second special session.

**7. Effect of These Decisions**—These judicial rebukes of gerrymandering have given great satisfaction to the people of the State. They have also been regarded as hopeful signs, in the other States, where gerrymandering has been quite as common and unblushing as it ever was in Wisconsin. In the future, we may safely hope, apportionments will be made with more attention to plain constitutional requirements.

**8. Present Legislation**—In fact, the legislature of 1895,

provided for the appointment of a joint committee of nine members, six assemblymen and three senators, with representatives of the minority party of each house in the usual proportions. The committee is charged with the duty of preparing an apportionment bill in strict conformity with constitutional provisions as interpreted by the Supreme Court.

**9. Senators and Assemblymen**—The senatorial term is four years. The senate districts are numbered in regular series (36). At the general elections, held on the first Tuesday after the first Monday in November, in the even numbered years, senators are chosen by single districts, alternately from the odd and the even numbered districts (36). At the same time assemblymen are chosen, by single districts for the term of two years (35).

**10. Eligibility**—To be eligible to the legislature, a person must be a qualified elector of the district he is chosen to represent (37). As has been pointed out, this admits persons not citizens of the United States.

**11. Powers of Separate Houses: Elections : Quorum**—The provisions as to elections, returns and qualifications of members, and as to quorum (38) are taken word for word from the United States constitution. The legislature, however, has never been able to put such uncertainty of meaning into the expression "a majority of each shall constitute a quorum to do business," as has the U. S. House of Representatives.

**12. Officers: Rules : Expulsions**—Each house chooses its own officers (40) except that the lieutenant-governor is president of the senate (71). Each house determines the rules of its own proceedings and has the power to expel members for contempt or disorderly conduct (39).

**13. Meetings**—The legislature meets in Madison in regular session, once every two years. The day of meeting is the second Wednesday of January after the election (42).

**14. Privileges of Members**—The privileges of members and the restrictions placed upon them (43, 44, 46, 47) are nearly identical with similar privileges and restrictions of United States senators and representatives (Y. C. B. p. 108).

**15. Vacancies**—Vacancies are filled by special elections called by the governor (45).

**16. Bills**—Any bill may originate in either house (50). In Congress, all bills for raising revenue must originate in the House of Representatives (Y. C. B., p. 108).

**17. Salaries**—The compensation of members of the senate and assembly is five hundred dollars, for each regular session, and mileage at the rate of ten cents a mile in going to and returning from, the same (52). There is no extra compensation for attendance at special sessions, except the regular allowance for mileage (52).

**18. Town and County Government**—There shall be but one system of town and county government (54) and the powers of county boards may be prescribed by the legislature (53).

**19. County Boards**—The county boards at present, are made up of the chairmen of the several town boards in the county, one member from each incorporated village, and one from each ward of each city. The boards meet annually on the Tuesday next succeeding the second Monday of November. They are very important bodies, clothed with large powers, though the student should notice that they have no *implied* powers.



All their powers are conferred upon them by the legislature. These powers may be increased or diminished, at the pleasure of the legislature.

**20. Powers**—Among their other powers the county board may,—

a. Settle and examine all the accounts of the county.

b. Apportion and order the levying of taxes.

c. Make lists of jurors.

d. Build, and keep in repair, the county buildings.

e. Organize, and change the boundaries of towns.

f. Incorporate literary, benevolent, charitable and scientific institutions.

g. Change the name of any town or village or person in the county.

h. Appropriate a sum of money not exceeding ten thousand dollars for a soldiers' monument.

i. Fix the salaries of county officers.

**21. Suits Against the State**—The eleventh amendment to the United States constitution, provides that no citizen of any State can sue another State in the United States Courts (Y. C. B., p. 123). The State constitution directs the legislature to determine by law, in what manner and in what court suits may be brought against the State (58). All such claims must first be presented to the legislature. Should the legislature refuse to allow the claim, the suitor may prosecute it in the Supreme Court of the State. The State in such suits is defended by the attorney-general.

**22. Official Oaths**—Members of the legislature, and all State, county, and town officers, must make an official oath, or affirmation, to support the constitution of the United States and the constitution of the State (59).

**23. Wisconsin National Guard**—The State militia is now



known as the Wisconsin National Guard. It consists of four regiments of infantry, one troop of cavalry and one battery of light artillery, in all 2,445 men (60). It is in a state of great efficiency.\*

**24. Private and Local Laws.**—The legislature used to be burdened with a great number of private and local measures. In 1875, the constitution was amended so as to prohibit the legislature from enacting any such laws in nine very important cases (62). In 1892, by another amendment, the legislature was still further restricted. No special laws can now be passed for incorporating any city or amending its charter (62). The people directed the legislature to provide for these cases by general laws and the legislature has done so (63).

**25. Powers Given to County Boards.**—Many of these powers are now exercised by the county boards, under authority conferred upon them by general acts of the legislature.

**26. Cities Classified.**—By a general act the cities of the State are divided into four classes. Cities of one hundred fifty thousand inhabitants, or over, constitute the first class. Milwaukee is the only city of the class. Cities of forty thousand inhabitants, or over, but

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\* While this is being written (July 1895), United States soldiers—cavalry and artillery—to the number of 200 men are marching from Camp Sheridan, near Chicago, to Camp Douglas, in Juneau Co. These United States forces are ordered to camp at Camp Douglas during the annual encampment of the Wisconsin National Guard, in order to instruct the Wisconsin forces in the United States discipline prescribed by Congress (Y.C.B., p. 110). Great standing armies are a menace to the liberties of the people, but every people should foster enough of the war spirit to make them secure from invasion. All members of the Wisconsin National Guard are volunteers.

less than one hundred fifty thousand, constitute the second class. There are no cities of this class, at present. Cities of ten thousand inhabitants, or over, but under forty thousand, constitute the third class. Cities of fifteen hundred inhabitants, or over, but under ten thousand, constitute the fourth class.

**27. General Charters for Cities**—There is a general charter, with special provisions for each of the separate classes of cities. New cities must organize under the general charter with the powers of the class to which they belong. Cities under special charters may reorganize under the general charter, but they are not compelled to do so. If the law had been made to apply to cities already existing, there would have been uniformity in city government, as there is in town and county government. The amendment of 1892 has cut off a large amount of special legislation. Since the amendment, no changes can be made in the charter of any city, without involving like changes in the charter of every other city of the same class.

**28. Sources of Legislative Power**—The student will notice that while there are prohibitions upon the power of the legislature, corresponding to, and in many cases identical with the prohibitions upon the United States congress, there is no enumeration of the powers of the legislature, corresponding to the enumeration of the powers of congress. The reason is, that congress has no powers except those granted by the constitution while the State constitution must not be construed as granting power to the legislature. It is rather a limitation of the powers of the legislature. It is competent for the legislature to exercise all legislative power, not forbidden by (a) the State constitution, (b) or the United States con-

stitution, or (c) delegated to congress.\* In other words, congress may do anything it is *authorized* to do ; the State legislature may do anything it is not *forbidden* to do.

## CHAPTER VIII.—COUNTY GOVERNMENT

1. **County Legislature**—As we have seen, the county board is the legislative arm of the county government.

2. **Sheriff and Coroner—Executive Officers**—The executive officers are the sheriff and the coroner (77).

3. **Administrative officers**—The administrative officers are the clerk, treasurer, register of deeds, surveyor, district attorney and school superintendent.

4. **Judicial Officers**—The judicial officers are the county judge, the clerk of the court, and the court commissioners.

5. **When Elected—Terms of Office**—All county officers are elected at the general elections in November, for the term of two years, except the county judge, elected at the spring elections in April for four years, and the court commissioners, appointed by the circuit judge and holding office during the term of the judge appointing them.

6. **Duties of Sheriff**—The duties of the sheriff previously given (Y. C. B., p. 54) apply to Wisconsin. He appoints an undersheriff and a number of deputy sheriffs, for whose official acts he is responsible. He is ineligible for re-election for two years after the close of his term (77).

7. **Duties of Coroner**—The office of coroner in Wisconsin is peculiar. Inquests are usually held by justices of the peace, though in all counties the coroner *may*

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\* Bushnell v. Beloit, 10 Wis. 195.

hold them, and in counties of over ninety-five thousand inhabitants he is required to hold them. He acts as sheriff when there is a vacancy in that office, and when the sheriff is a litigant.

**8. Duties of County Clerk**—The county clerk keeps a record of the transactions of the county board. He signs all orders on the county treasurer, and keeps a list of all orders drawn. He reports on oath, to the county board at their annual meeting all moneys received and disbursed by him. He has various other duties.

**9. Duties of Treasurer**—The treasurer takes charge of all the money of the county.

**10. Duties of Register of Deeds**—The register of deeds, in some States, called the recorder (Y.C.B., p. 54), keeps a record of births, deaths, and marriages in his county. He records all deeds, real-estate mortgages, city and village plats, certificates of organization of corporations, and quite a number of other legal papers. He is obliged to furnish certified copies of any of these records to any persons asking for them and tendering the fee fixed by law.

**11. Duties of Surveyor**—The county surveyor makes all surveys required of him by any court, or by any individual or corporation. He keeps a record of the plats, and field notes of all his surveys, and furnishes copies of any of the records of his office. His fees are fixed by law.

**12. Duties of District Attorney**—The duties of the district attorney already explained (Y. C. B., p. 55) apply to Wisconsin.

**13. Duties of Superintendent of Schools**—The county superintendent examines teachers and issues certificates to them. He has general supervision of all of the common

schools of the county not under city boards of education.

**14. Duties of County Judge**—One principal duty of the county judge is the probate of wills. Probate courts have been abolished by the legislature (92), and their powers conferred upon the county courts. The county judge has also many other duties.

**15. Duties of Clerk of the Court**—The clerk of the court is the clerk of the *Circuit Court*. He is not an officer of the county court, except for the purpose of certifying to copies and transcripts of all the records and files of the county court, to be used outside of the State. He keeps all the records, books, and papers of the circuit court. He keeps a record of all the judgments and orders of the court. He keeps a court record including a list of all the cases tried in the court, with the names of the parties, designated as plaintiffs or defendants, the names of the attorneys of the respective parties, a brief statement of the nature of the suit, and how it was disposed of. He keeps a similar record of all criminal proceedings. He keeps a list of the names of all persons admitted to United States citizenship by the court. His fees are determined by law.

**16. Duties of Court Commissioners**—Court commissioners have all the powers of circuit judges "at chambers," that is, when not engaged in holding court.

## CHAPTER IX.—TOWN GOVERNMENT

**1. The Town a Pure Democracy.**—On account of the large New England element in the State, the town has retained many of the features of the New England township. It is a very close approach to a pure democracy. The people meet in town-meeting every spring, on the



first Tuesday of April, and legislate upon such matters as voting taxes for schools, roads, bridges, and the care of the poor as they see fit. All the town officers report to the people at this meeting and officers are elected for the next year.

**2. Town Board.**—The town board of supervisors consists of three members, one of whom is designated chairman, and, as we have seen, serves on the county board. The town board enforces the orders of the people at the spring election. It has control of all the property of the town. It forms and alters school districts and fills vacancies in town offices. The members of the board are the inspectors of elections, and together with the town clerk and the assessor they form the town board of review of assessments for taxes. The board has a wide range of important duties.

**3. Town Clerk.**—The town clerk is the secretary of the town board. He keeps a record of all the proceedings of the board, and an account of all moneys received and paid out. He is clerk of all town meetings also. He has the custody of all chattel mortgages.

**4. Town Treasurer.**—The town treasurer receives and pays out the money of the town. He is also tax collector.

**5. Assessor : Boards of Review.**—The assessor makes a list of all the taxable property of the town, both real and personal, and puts a value upon it. At the meetings of the board of review, spoken of above, any one aggrieved may appear and show cause why the valuation of any property should be changed. When the work of the board of review is completed the assessment is said to be equalized. It may be noted here, that the county board constitutes a board of equalization as between the different towns of the county, and the secretary of State,



State treasurer, and attorney-general, constitute a State board of equalization as between the different counties of the State.

**6. Constables**—The constables, of whom there are not more than three in each town, are the ministerial officers of justices of the peace. They may be required by the sheriff to attend upon the sessions of the Circuit Court. They may serve any legal process within their county when so directed by any court.

**7. Justices of the Peace**—There are four justices of the peace in each town. The term of office is two years. They are judicial officers with jurisdiction co-extensive with the county, in civil cases where the amount in controversy does not exceed two hundred dollars, and of criminal cases where the punishment does not exceed six months' imprisonment in the county jail or a fine of five hundred dollars, or both. They may administer oaths, take acknowledgments, solemnize marriages and have many other powers.

## CHAPTER X.—EXECUTIVE.

**1. Governor and Lieutenant-Governor**—The executive power is vested in a governor who, together with a lieutenant-governor, is elected for a term of two years by the qualified electors of the State (64). The qualifications for both offices are the same as for other non-judicial State offices, except that United States citizenship is added (65).

**2. How Elected**—A majority vote is not required for these, or any other state offices. The candidate receiving more votes than any other, is elected. In case of a tie, the legislature, in joint session, chooses by ballot

one of the persons having an equal and the highest number of votes (66).

**3. Powers of Governor**—The governor is commander-in-chief of the military and naval forces of the State. He may call special sessions of the legislature and may convene it for certain reasons at other places than Madison. He sends to every session of the legislature, a paper called the governor's message, giving the condition of the State and making such recommendations as seem to him expedient. He transacts the business of the state with all the civil and military officers. He expedites all measures resolved upon by the legislature, and sees that the laws are faithfully executed (67). His compensation is five thousand dollars a year (68). He may grant pardons and reprieves except in cases of treason and impeachment (69). The manner of making applications for pardons is prescribed by law, and the governor is required to communicate annually to the legislature each case pardoned with the name of the convict, and his reasons for pardoning him (69). It must be somewhat difficult for the governor to comply with this constitutional requirement since the legislature meets only once in two years. Like the president, he has the veto power, and under almost identical restrictions (Y. C. B., p. 139.) (73). When the office becomes vacant, the lieutenant-governor becomes governor (70).

**4. How Bills become Laws**—The provisions of the constitution prescribing how bills may become laws are taken from the United States constitution with only very slight variations (Y. C. B., p. 139.) (73).

## CHAPTER XI.—ADMINISTRATIVE

1. **Departments**—There are only three departments in the United States government—legislative, executive and judicial. All administrative officers are officers of the executive. This is not true in the state government. The president has a cabinet of official advisers in the heads of the great departments. The governor has no such cabinet.

## OFFICERS ELECTED BY THE PEOPLE FOR TWO YEARS

2. **The Secretary of State**, who keeps the records of the official acts of the legislative and executive departments, acts as State auditor, and performs many other duties assigned him by law (75). His yearly compensation is \$5000.

3. **The Treasurer**, who takes care of the moneys of the State and has many other duties (76). Salary \$5000.

4. **The Attorney-General**, who is the legal advisor of the State officers and the lawyer of the State (76). Salary, \$3000.

5. **The State Superintendent**, who has charge of public instruction (115 and note). Salary, \$1200.

6. **The Railroad Commissioner**, who inquires into any neglect or violation of the laws by railroad corporations, and examines the condition and equipments of all the railroads of the State with relation to public safety. He collects statistics as to the actual cost, receipts, expenditures, and net earnings of railroads, reports the same to the State treasurer, and publishes every year a railroad map of the State. Salary, \$3000.

7. **The Insurance Commissioner**, who has general superintendence of all insurance companies doing business in the State and authority to inquire into their financial standing, to require them to report to him such facts as he may require, and to see that they obey the State insurance laws. Salary, \$3000.

#### OFFICERS APPOINTED BY THE GOVERNOR

8. **The Commissioner of Labor, Census, and Industrial Statistics**, whose duty it is to collect and collate statistics relating to the manufactures, industrial classes, and material resources of the State, to examine into the relations between capital and labor, the means of escape from fire, protection of life and health in factories and workshops, the educational, sanitary, moral and financial condition of laborers and artisans, and other kindred subjects. The person appointed by the governor must be approved by the senate in order to hold the office. Salary, \$2000.

9. **The Adjutant-General** is the governor's chief of staff and inspector-general. He has custody of all the military records of the State and acts as State pension agent, to assist residents of Wisconsin having claims against the United States on account of service in the war of the rebellion, in proving their claims. Salary, \$2000.

10. **The Quartermaster-General** is commissary-general and chief of ordnance. He has charge of all the military property of the State, including the battle-flags, brought back from the war.

11. **The Superintendent of Public Property** has charge of the capitol and the public grounds around the same. With the advice of the governor, he employs and fixes

the compensation of all workmen needed to keep the capitol and public grounds in a proper state of cleanliness and repair. Under the direction and control of the governor, he purchases all fuel, furniture, fixtures, carpets, gas or other articles or things required for use in and about the capitol for State purposes, except stationery. He is required by law to advertise for bids for furnishing stationery, in two newspapers in each of the cities of Madison, Milwaukee and Chicago, and to let the contract to the lowest bidder. This stationery is furnished to the legislature, and to the governor and other State officers. The superintendent must charge himself with all stationery purchased, and account for all of it, in the annual report he is required to make to the governor. Salary, \$2000.

**12. The State Treasury Agent** collects State licenses from peddlers, traveling showmen, transient merchants and others. He is allowed as compensation for his services and the services of his assistants, one fourth of all the moneys collected.

**13. The State Supervisor of Inspectors of Illuminating Oils** is appointed by the governor by and with the advice and consent of the senate. The State is divided into fifty-two districts with an inspector in each district appointed by the supervisor and responsible to him. It is the duty of the inspectors to examine and test all illuminating oils offered for sale in the State and to forbid the sale of all oils that do not stand the test. Salary of supervisor, two cents on each barrel of oil inspected, but not more than \$3000 altogether.

**14. Dairy and Food Commissioner**—The governor, by and with the advice and consent of the senate appoints a dairy and food commissioner, at a salary of \$2500.



The commissioner, with the consent and advice of the governor, appoints two assistants, one of whom shall be an expert in the matter of dairy products, and the other a practical analytical chemist, whose salaries shall not exceed \$1800 each. It is made the duty of the commissioner to enforce the laws against the adulteration of foods, drinks, and drugs, and to inspect any article of milk, butter, cheese, lard, syrup, coffee, or tea or other article of food, drink, or drug, made or offered for sale in the State which he may suspect to be impure, unhealthful, or adulterated, or counterfeit, and to cause to be prosecuted those manufacturing or selling such articles.

#### BOARDS.

Much of the business of the State is done through boards. The principal of these are the following :

**15. Trustees of State Library**—The justices of the Supreme Court and the attorney-general are *ex officio* trustees of the State library. They appoint a librarian to take charge of the library under rules and regulations prescribed by law. His salary is \$2000.

**16. Commissioners of Public Lands**—The secretary of State, treasurer, and attorney-general are made commissioners of public lands, by the constitution (121, 122). They sell school and university lands, and see that the proceeds are kept safely invested.

**17. The Board of Regents of the University of Wisconsin** consists of fifteen members. Two—the State superintendent of education and the president of the university—are members, *ex officio*. The others are appointed by the governor for terms of three years,—one member from each of the ten congressional districts of the



State and two from the State at large. The appointed members are classified so that the terms of the members of some one class expire every year, and the other two classes hold over. The Board is intrusted with the government of the University of Wisconsin, at Madison.

**18. The Board of Regents of Normal Schools** consists of eleven members. Two—the governor and the State superintendent of education—are members *ex officio*. The others are appointed by the governor, by and with the advice and consent of the senate. The term of office is three years, and the members are classified in the same manner as the members of the Board of Regents of the University. This board is intrusted with the government of the normal schools of the State located at Platteville, Whitewater, Oshkosh, River Falls, Milwaukee and Stevens Point. The seventh school will be opened at West Superior in the city of Superior, in the fall of 1896. The state treasurer is *ex officio*, treasurer of both these boards.

**19. The State Board of Health and Vital Statistics** is composed of seven members appointed by the governor for seven years each. The term of one member expires each year. The law directs that this board shall “make sanitary investigation and inquiries respecting the causes of disease, especially epidemics, the causes of mortality and the effects of localities, employments, conditions, habits and circumstances, and shall diffuse such information among the people of the State.” The board has an advisory relation to all local boards of health.

**20. Local Boards of Health.**—The organization of such local boards is made obligatory in every town, village, and city in the State. Every practicing physician is

compelled by law to report all cases of contagious diseases arising in his practice, to his local board. The local board must then report the cases to the State board.

**21. Quarantine Rules**—The State board has charge of all matters relating to general quarantine, and has authority to make rules and regulations for the protection of the public health, which it becomes the duty of all local and general officers of the State to respect and enforce. This machinery is well organized, and makes itself effective in the prevention of disease and the protection of the health and lives of the people.

**22. Compensation**—The members of the state board serve without pay. The secretary receives a salary fixed by the board. Members of local boards also serve without pay, except that the health officer receives a salary fixed by the local authorities.

**23. Annual Appropriation**—The State makes an annual appropriation of \$5,500 to defray the expenses of the board.

**24. The Commissioners of Fisheries** constitute a board consisting of eight members, composed as follows:

a. The governor while in office.

b. Six commissioners to be appointed by him, and with the consent of the senate.

c. The professor of zoology in the University of Wisconsin, for the time being, shall be, *ex officio*, a member of said commission. The six appointed members hold office for six years each, one member going out of office each year.

**25. Powers and Duties**—The powers and duties of the commission are, in part, as follows:

a. The propagation and breeding of fish.

b. The collection and diffusion of information about the propagation and preservation of fish.

c. The government and control of State hatcheries. There are two State hatcheries—one near Madison, for the hatching of brook trout, California trout and carp, the other at Milwaukee for hatching white-fish and wall-eyed pike. The legislature of 1895 provided for an additional hatchery to be located in the north half of the State, and increased the annual appropriation for the support of the work of the commission to \$20,000. The new hatchery has been located at Bayfield.

d. Receiving of spawn and fry from the United States.

e. The right to take fish at all seasons of the year, from all public waters, for artificial propagation.

f. The preservation of fish and game, through the enforcement of the fish and game laws, and otherwise.

**26. Superintendent of Fisheries**—The commissioners appoint a superintendent of fisheries at a salary not to exceed \$2,000. His duties are defined by law. He has charge of the hatcheries and the fish-car used in distributing fry.

**27. State Fish and Game Warden**—The governor is required by law to appoint a State fish and game warden, whose term of office shall be two years, and whose salary shall be \$1,800, and necessary expenses. The State fish and game warden shall act as secretary to the commissioners of fisheries. He is clothed with very large powers in the enforcement of the fish and game laws, and in the confiscation of all nets, snares, traps and other contrivances used in the violation of the law. He and his deputies have power to execute all warrants and processes for the arrest of violators of the law, and

all sheriffs, constables, and police officers are by law required to arrest them when called upon to do so.

**28. Deputies**—The fish and game warden appoints such a number of deputies as the commissioners may deem necessary, but not to exceed two in each county.

**29. Wisdom of the Policy of the State**—Wisconsin is noted for the great number of its lakes, and streams of pure cold water. It has long been a favorite resort of the angler and the hunter. Thousands of people from outside of the State are attracted hither every summer. But, great as the fishing interests of the State are, from the standpoint of the sportsman, they are still greater as a source of food supply for the people. The State is very wise in caring for this important interest so thoroughly.

**30. The State Board of Control** consists of five members appointed by the governor and confirmed by the senate. The term of office is five years, and one member goes out of office each year. The salary is \$2,000.

**31. Powers and Duties**—This board has control of all the State charitable and penal institutions, which are:

- a. The State Hospital for the Insane, near Madison.
- b. The Northern Hospital for the Insane, near Oshkosh.
- c. The State Prison, at Waupun.
- d. The Industrial School for Boys, at Waukesha.
- e. The School for the Deaf and Dumb, at Delavan.
- f. The School for the Blind, at Janesville.
- g. The State School for Dependent Children, at Sparta.

**32. School for the Feeble-Minded**—The legislature of 1895 provided for an institution for the care, custody, and training of the feeble-minded, epileptic and idiotic

to be known as the "Wisconsin Home for Feeble-minded." This institution has been located by the board at Chippewa Falls. A liberal appropriation of \$100,000 has been made for it.

**33. Other Institutions Supervised by the Board**—Besides the State institutions the board has under its inspection 4 semi-state institutions, 22 county insane asylums, 68 jails, 49 poor-houses, 50 private benevolent institutions, and 198 police stations and lockups.

**34. The State Board of Pharmacy** consists of five members, who must be resident pharmacists, appointed by the governor, for terms of five years. The governor is restricted in the choice of members, to pharmacists recommended to him by the Wisconsin Pharmaceutical Association. The association recommends three persons annually, and any one who has ever been recommended is eligible.

**35. Powers and Duties**—This board holds examinations, and grants licenses to pharmacists and pharmacists' assistants to sell poisons, drugs and medicines, and compound and dispense prescriptions. All other persons are forbidden by law, under heavy penalties, to engage in the business. A recent decision in an important test case, shows that the courts are disposed to construe the law prescribing the duties of this board with great strictness.

**36. Compensation**—The members of the board get \$5 a day for all time actually spent in the performance of their duties.

**37. The Board of Dental Examiners** consists of five practicing dentists appointed by the governor for terms of five years. The duties of the board are similar to those of the State Board of Pharmacy. All persons



practicing dentistry must be licensed and registered. Licenses are obtained through examinations, held by the board, or upon diplomas of reputable dental colleges, submitted to the board. The members of the board are paid by fees collected from candidates examined.

**38. The State Board of Examiners for Teachers' State Certificates** consists of three members appointed annually by the State superintendent. It is the duty of the board to examine candidates for State certificates. The limited State certificate makes the holder a legally qualified teacher for the term of five years. The unlimited qualifies for life. The county superintendent's certificate qualifies for the office of county superintendent, and is a life certificate to teach. These certificates are issued by the State superintendent on the recommendation of the board. Holders of diplomas of State normal schools, colleges and universities, other than the Wisconsin normal schools and the University of Wisconsin, may submit their diplomas to the board, together with proof of good moral character and success in teaching. When it appears to the satisfaction of the board that the courses of study of these institutions are fully and fairly equivalent to similar courses of the Wisconsin State institutions, the diplomas may be countersigned by the State superintendent. Such countersignature makes them unlimited State certificates. Holders of the State certificates of other States obtained by examination, may, in a similar way, get their certificates countersigned. The members of the board get \$5 a day for time actually spent in their duties.

**39. Admission to the Bar**—The State Board of Examiners for Admission to the Bar consists of five mem-



bers appointed annually by the Supreme Court. The certificate of the board licenses the holder to practice in the courts of Wisconsin. The members of the board are paid \$10 a day for time spent in their duties.

**40. The State Board of Deposits** consists of the governor, the secretary of State, the treasurer, and the attorney-general. It is the duty of the board to designate banks in which the public funds may be deposited. Should any bank fail, the loss of the public money, if there is any, falls upon the State. Should any interest be paid, it accrues to the State.

**41. State Board of Arbitration**—A new board provided for by the legislature of 1895 is known as the State Board of Arbitration and Conciliation. It consists of three members appointed by the governor. One member must be an employer of labor, or selected by some association representing employers of labor. One must be selected by some labor organization and must not be an employer of labor. The third is appointed upon the recommendation of the other two, provided they agree. If they do not agree, the governor appoints without recommendation.

**42. Powers and Duties**—Whenever any controversy exists between any employer of labor and his employes, to the number of twenty-five, or more, and application is made by the employer, or by a majority of the employes, it becomes the duty of the board to visit the locality of the dispute, make careful inquiry into the cause thereof, hear all the parties in interest who may appear to give testimony, and advise what should be done to adjust the dispute. Decisions of the board must be in writing, and must be open to the public.

Decisions are binding upon the parties to the dispute for six months.

**43. Local Boards**—The law creating this board provides also for local boards of arbitration with powers similar to those of the State board.

**44. Tribunals of Conciliation**—The constitution provides for "tribunals of conciliation," and says that the legislature shall pass laws defining their powers and duties (94). This duty the legislature has so far failed to perform. It is quite certain that many lawsuits might be prevented, as well as many strikes and lockouts, with their resulting expense, suffering and hatred, by a spirit of conciliation in the beginning of the trouble. The constitutional provision seems a very wise one.

**45. Board of Immigration**—The governor, the secretary of State and three other persons appointed by the governor, constitute the Board of Immigration. The members serve without pay, but are allowed necessary traveling expenses. It is the duty of this board "to enhance and encourage immigration to this State." It has authority to collect and disseminate useful information concerning the climate, soil, product, population, and agricultural, mineral and other resources and advantages of the state. An annual appropriation of \$5,000 is made for the work of the board.

## CHAPTER XII.—JUDICIARY.

**1. Impeachments**—The provisions of the constitution in regard to impeachments and impeachment trials are copied from the United States constitution (Y. C. B., pp. 105, 106, 115). The framers of the constitution did

not even change the name "house of representatives" to "assembly"—a singular piece of carelessness (78).

**2. Definitions**—The terms used in the section on impeachments have been defined in Y. C. B., pp. 78 and 79.

**3. Who May be Impeached**—All the civil officers of the State may be impeached for corrupt conduct in office or for crimes and misdemeanors (78).

**4. Assembly Impeaches**—Impeachments are made by the assembly, but a majority of all the members elected must concur (78).

**5. Senate Tries Impeachments**—The senate tries all impeachments made by the assembly, but the members, when they organize as a court, must take a new oath, or affirmation, to try the case impartially and to decide according to the evidence. It requires the concurrence of two-thirds of the members present to convict (78). Upon conviction, the officer is removed from office, and may also be disqualified to hold office afterwards (78).

**6. Status of Officers Impeached**—When the governor or a judge is under impeachment, he is suspended from office until acquitted (70–78). Under the United States, all impeached officers perform the duties of their respective offices until convicted. The same rule holds in the State with the two exceptions just noted. The common presumption is that an accused person is innocent and that presumption holds until he is proved guilty. The people of Wisconsin demand, however, that their governors and judges shall be above suspicion.

**7. Who Presides**—The lieutenant-governor, being president of the senate, presides at impeachment trials, except when the governor is on trial (78). He is then

acting governor (70). Besides, he is an interested party in such a trial.

**8. Punishment in Certain Cases**—Should the offense for which the officer is tried be a criminal as well as a political offense, he may be indicted, tried, convicted, and punished, like any other criminal (78).

**9. Impeachment Trial not a Criminal Prosecution**—An impeachment trial is not a criminal prosecution. Conviction cannot be followed by fine or imprisonment, and the party convicted is beyond the reach of the governor's pardoning power (69). The offense is a political offense; the punishment is a political punishment.

**10. One Case of Impeachment**—In 1853, Judge Levi Hubbell, of the second judicial district, was impeached. After a protracted trial he was acquitted. No other case has ever arisen in the State.

**11. Independence of State Judicial System**—The State has a complete judiciary of its own independent of the United States system. The common belief that all cases may be appealed from the State Supreme Court to the United States Supreme Court is very erroneous. Three classes of cases may be so appealed. They are :

a. Where the validity of a treaty, or statute, or an authority exercised under the United States was called in question, and the decision of the State Court was against its validity.

b. Where the validity of an authority exercised under the laws of the State was called in question, on account of its being repugnant to the constitution, or laws of the United States and the decision of the State Court was in favor of its validity.

c. Where any United States right, privilege or im-

munity was claimed and the State Court denied the right, privilege or immunity.

In all other cases, the findings of the State Court are final, and the Federal Courts have no jurisdiction over them whatever.

#### CONCURRENT JURISDICTION OF THE STATE AND THE UNITED STATES COURTS

**12. Jurisdiction**—In nearly all the cases enumerated in Article III., Section 2, Clause 1 (Y. C. B., p. 116), of the United States constitution, the State Courts have jurisdiction concurrent with the United States Courts (Act of Congress, March 3, 1875).

**13. Exceptions**—The United States statutes enumerate the following classes of cases as constituting the exceptions to this concurrent jurisdiction. In these cases the Federal jurisdiction is exclusive :

- a. All crimes and offenses against the United States.
- b. All suits for penalties and forfeitures incurred under United States law.
- c. All civil causes of admiralty and maritime jurisdiction.
- d. All seizures under United States laws on land or on waters not within admiralty and maritime jurisdiction.
- e. Patent right and copyright cases.
- f. Bankruptcy cases, when there is a United States bankruptcy law.
- g. All controversies of a civil nature where a State is a party except between a State and its citizens, or between a State and citizens of other States, or aliens.

**14. Removal to Federal Courts**—Although as we have seen, cases, as a rule, are not appealable from the State Courts to the Federal Courts, any case, over which the



two classes of courts have concurrent jurisdiction, begun in a State court may be removed, before trial, to the United States Circuit Court for the proper district. It can not be removed from the Federal Court to the State Court. The removal may be had on the petition of either party to the suit.

**15. Both classes of Courts open to Litigants**—This means that both the State courts and the United States Courts are open to litigants. When both parties consent, the case may be settled in the State Court. When the plaintiff begins the suit in the State Court and changes his mind, or when the defendant prefers the United States Court, the case may be removed and settled there. Should the plaintiff begin his suit in the United States Court, it must be tried there.

**16. Wide Range of Laws Interpreted: Rules**—It will be seen that judges of the State courts must often try cases arising under the United States constitution and laws, and that federal judges must often try cases arising under the State constitution and laws. In such cases, the state judges must interpret the United States Constitution and laws as interpreted by the United States Supreme Court, if that court has passed upon the question at issue. United States judges in trying cases under the State constitution or laws, almost always follow the decision of the State Supreme Court if that court has passed upon the question at issue.

**17. A Case Supposed**—For example, a suit brought in a Circuit Court of Wisconsin, by a citizen of Illinois, for the recovery of a debt of \$5000 or more, upon being removed to the United States Circuit Court for the proper district, would be tried according to the laws of Wisconsin. If judgment should be for the plaintiff,



the defendant citizen of Wisconsin would be entitled to all the exemptions from execution granted by the statutes of Wisconsin.

**18. Harmonious Relations**—In no other department of government have the interrelations of State and Federal authority been so carefully and perfectly adjusted as in the judicial.

#### EXCLUSIVE JURISDICTION OF STATE COURTS

**19. Not all cases Triable in United States Courts**—The State Courts have jurisdiction exclusive of the Federal Courts, of all cases not made triable in the Federal Courts, by the United States Constitution (Y. C. B. pp. 183, 184, 198). These cases cover a very wide range, arising as they do under the constitution and laws of the State, both common and statute, and embracing all the innumerable differences that arise between man and man.

#### THE STATE JUDICIAL SYSTEM

**20. The Judicial Power of the State** is vested in (a), the Supreme Court, (b) seventeen Circuit Courts, (c) two Superior Courts, one in Milwaukee and one in Superior, (d) County Courts, one in each county, (e) Municipal Courts, and (f) Justices' Courts (79).

**21. The Supreme Court**—The Supreme Court is composed of five justices (81) elected by the people in the spring for a term of ten years. The term of one justice expires every two years. The justice having been longest a continuous member of the Court (or, in the case of two or more such senior justices having served for the same length of time, then the one whose commission first expires), shall be *ex officio* the chief justice (82). The salary is \$5000,

**22. Jurisdiction**—The Supreme Court has appellate jurisdiction only, except in suits against the State and in issuing original and remedial writs (80) such as *habeas corpus* (Y. C. B., p. 88) *mandamus*, *injunction*, *quo warranto*, and *certiorari*.

**23. Names of Writs**—These writs are named from the words with which they used to begin in the days when they were written in Latin.

**24. Mandamus**—Mandamus means literally we command. It is a written order of a Court commanding certain things to be done. It is addressed to those whose duty it is to do the things commanded. For example, a public officer might refuse to surrender the books and records of his office, to his successor. A proper procedure for the newly elected officer to adopt would be to apply for a writ of mandamus addressed to his predecessor. The writ would put him in possession of the office and all the books and papers belonging to it.

**25. Injunction**—An injunction is defined to be a writ framed according to the circumstances of the case, commanding an act which the court regards as essential to justice, or restraining an act which it esteems contrary to equity and good conscience (Am. Cyc.). A sues B and gets judgment against him. B afterwards finds among his papers a receipt in full for the very debt for which A sued him. In such a case the Court would enjoin A from executing his judgment, if there were no relief for B, in law. Publishers may be enjoined from publishing private letters or papers. Holders of property may be enjoined from disposing of it while the ownership of it is being determined by judicial proceedings.

**26. Certiorari**—Certiorari is a writ issued by a higher

court to a lower court, compelling the lower court to send up its record of the case in question, tried, or pending, in that court. The writ is obtained upon the complaint of a party that he has not obtained justice or cannot have a fair trial in the lower court. The higher court tries the case according to the facts shown in the record sent up. The name comes from the words *certiorari volumus* with which the Latin form of the writ opens. The words mean we wish to be certified.

**27. Quo Warranto**—Quo warranto (by what authority) is a writ, brought before a proper tribunal, to inquire by what warrant a person or a corporation acts, or exercises certain powers (Blackstone). In the case supposed under *mandamus* the newly-elected officer might have proceeded against his predecessor by quo warranto. In that case his predecessor would have been compelled to appear before the court and show by what authority he held his office. If unable to show his right to the office he would have been ousted.

**28. Powers Defined**—"That portion of this section empowering the Supreme Court to issue writs, was designed to give it original jurisdiction, in all judicial questions affecting the sovereignty of the State, its franchises and prerogatives, or the liberties of the people" (35 Wis. 425). The court does not exercise this authority in ordinary cases.

**29. Terms of Supreme Court**—The Supreme Court meets twice a year at Madison in the capitol, during the months of January and August.

**30. Qualifications of Judges**—Judges of the Supreme Court must be at least twenty-five years of age, citizens of the United States, and qualified electors within their jurisdictions. They receive no fees, and are ineligible

for all offices of public trust except judicial offices (88).

### CIRCUIT COURTS

**31. One Judge for each Circuit**—There is a judge for each circuit, chosen by the people at the spring elections (85).

**32. Term**—The term of office is six years, beginning on the first Monday in January succeeding the election.

**33. Salary**—The salary is \$3600 with \$400 additional to defray traveling expenses.

**34. Qualifications**—The circuit judges, after their election, must reside within their respective jurisdictions, and must have all the qualifications of justices of the Supreme Court (85, 88).

**35. Eligibility of Judges to Election to Congress**—All votes cast for a judge of the Supreme, or the Circuit Court, by the legislature or the people for any office other than a judicial one, are void (88). In spite of this provision, the people have in several cases, elected circuit judges to the house of representatives, and they have always been admitted by that body. Of course, they had to resign their judgeships. The United States Constitution makes each house the judge of the elections returns and qualifications of its own members (Y. C. B., p. 107). It also fixes the qualifications for membership in each house (Y. C. B., pp. 105, 106). The State cannot modify these constitutional requirements. So this part of our constitution is void, so far as the offices of United States Senator or Representative are concerned.

**36. Jurisdiction**—The Circuit Courts have original jurisdiction in all matters civil and criminal, within the State, not excepted in the constitution and not pro-

hibited by law. They have appellate jurisdiction and supervisory control, over all the inferior courts of the State. They have power to issue all the original and remedial writs which the Supreme Court has power to issue (86).

**37. Terms**—The terms of the Circuit Court are held at the county seats of the different counties. There must be two terms a year in each county, and there may be more.

**38. Judges may Hold Court for Each Other**—It may happen that a judge is an interested party in a suit entered for trial in his court, or he may be sick at term time. For these, and similar reasons, judges may hold court for each other (89).

**39. Removal by Address**—We have seen that judges may be removed from office by impeachment. They may also be removed by address of both houses of the legislature, but two-thirds of all the members elected to each house must concur. The judge must be served with a copy of the charges against him, and must be given the right to defend himself. On the question of removal, the ayes and noes must be entered on the journal (91). This is a summary way of removing a bad judge.

**40. Address made to Governor**—The address is made to the governor. On the receipt of the address, the governor removes the judge and appoints some one in his place to hold the office until his successor is elected and qualified (87).

#### SUPERIOR COURTS

**41. Superior Court of Milwaukee County**—Superior courts have been established in Milwaukee and West



Superior, for the counties of Milwaukee and Douglas. The Superior Court of Milwaukee county "shall exercise powers and jurisdiction in all civil actions and proceedings in law and equity," with some important exceptions, concurrent with and equal to the jurisdiction of the Circuit Court for that county.

**42. Superior Court of Douglas County**—The Superior Court of Douglas county has powers and jurisdiction concurrent with the Circuit Court of Douglas county in both criminal and civil matters, with some exceptions and limitations.

**43. Authority for these Courts : Powers**—The authority for the creation of these courts is found in the constitution (79).

#### COUNTY COURTS

**44. Authority for County Courts : Powers**—The constitution provided for courts of probate in each county, but it gave the legislature power to abolish these courts and to confer probate powers upon such inferior courts as may be established in each county (92 and 79). The legislature has exercised this power. It has created county courts and conferred all probate powers upon them. The county courts have been spoken of in Chapter VIII.

#### MUNICIPAL COURTS

**45. Municipal Courts : Powers**—There are municipal courts in Milwaukee, Madison, Oshkosh, Eau Claire, and many of the other important cities of the State. They are created by the legislature in accordance with powers conferred by the constitution (79). The number of these courts is rapidly increasing, no fewer than



five having been created by the legislature of 1895. Many of them have jurisdiction co-extensive with the counties in which they are situated. The constitutional limit of their jurisdiction in their municipalities is the jurisdiction of the Circuit Courts in their respective circuits (79). Within this limit the powers of these courts vary widely. They are determined in each case by the act of the legislature creating them.

#### JUSTICES' COURTS

**46. Powers**—Justices' courts are provided for in towns, incorporated villages and cities. The powers and duties of justices of the peace have already been mentioned in Chapter IX.

### CHAPTER XIII.—FINANCE

**1. Property Taxable : Uniform Taxation**—The constitution authorizes the legislature to prescribe what property shall be taxed, and provides that the rule of taxation shall be uniform (102). The instructions to assessors are uniform throughout the State, and town, county, and State boards of equalization are provided for by law. By these means substantial uniformity is secured. This means that the rate of taxation for State taxes shall be uniform throughout the State, and that the rate for county, city, town and school district taxes shall be uniform in the county, city, town, or school district. It does not mean that the rate shall be the same for purposes of local taxation in any two counties, cities, towns, or school districts. The fact is, that the rate of local taxation differs very widely in different places.

**2. No Moneys Paid out except in Pursuance of an Appropriation**—The State treasurer is forbidden to pay out any money except in pursuance of an appropriation by law.

**3. Limits for Claims**—The legislature is forbidden to make any appropriation for the payment of claims against the State unless they are filed within six years after they accrue. Claims of the United States and judgments against the State are excepted (103).

**4. Secretary of State Auditor**—The secretary of State is, *ex officio*, auditor. He requires the claimant in presenting his claim to state the legislative provision authorizing its payment.

**5. State Credit**—The credit of the State shall never be given or loaned in aid of any individual, association, or corporation (104). This is a limitation upon the State. It does not deprive the legislature of power to authorize municipalities to contract debts. There is no such limitation as this upon the power of the United States. Experience has proved that the policy of the State in this respect, is wiser than the policy of the United States.

**6. Restrictions upon the Power of Incurring Debt.**—The State is forbidden to contract any public debt, except to the extent of one hundred thousand dollars, to defray extraordinary expenditures (107). It may also borrow money to pay the expenses of a defensive war to suppress insurrection. (108).

**7. Expenses, how met.**—The estimated expenses of each year must be met by a State tax for that year. If, for any cause, the expenses exceed the income, the deficit must be made up the following year (106).

**8. Specific Restrictions.**—The State is expressly forbid-

den to incur any debt for works of internal improvement, or even to be a party in carrying on such works. It may act as trustee and carry on works of internal improvement, for which a grant of lands, or other property has been made to it, and may anticipate the revenues therefrom (111). The Supreme Court has held this prohibition to be absolute. A judgment against the State for services in defending agents of the State, appointed by it to protect lands granted to it, to aid in the construction of railroads is declared to be a debt within the meaning of this section.

**9. State Credit.**—No State in the Union has better credit or higher financial standing than Wisconsin. The State debt is in the form of certificates of indebtedness to the trust funds. It amounted to \$2,251,000. Sept. 30, 1894. This indebtedness means, simply, that the State has borrowed the sum named from the trust funds and pays interest upon it. In this way the funds are safely invested, and the interest is available for the support of the objects for which the funds were created.

## CHAPTER XIV.—TRUST FUNDS

The principal trust funds of the State are

**1. The School Fund**—This fund is composed of: (a) The five hundred thousand acres of land given by congress in aid of the Rock River canal, and, afterwards, by the consent of congress, transferred to this fund; (b) section sixteen in each township; (c) all moneys accruing to the State by forfeiture and escheat; (d) all penalties for trespass on school lands; (e) all unspecified grants to the State; (f) all fines collected in the several counties for breach of penal laws; (g) all moneys paid

as an exemption from military duty ; (h) five per cent. of the net proceeds of sales of United States public lands.

**2. Amount**—This fund, Sept. 30, 1894, amounted to \$3,418,760.25 with 47,381.47 acres of land still unsold.

**3. How Invested**—This fund is kept invested (121) and the interest and all other revenues derived from it are devoted to the support and maintenance of common schools in each school district, and the purchase of suitable libraries and apparatus therefor (116). The residue shall be appropriated to the support and maintenance of academies and normal schools, and suitable libraries and apparatus therefor (116).

**4. The Mill Tax**—In order to equalize more perfectly the burden of supporting the common schools, the legislature of 1885 provided for an annual State tax of one mill on the dollar.

**5. Income and Proceeds of Mill Tax**—The income from the proceeds of the mill tax, and the interest from the invested fund, together, aggregated \$862,716.40 for the fiscal year ending Sept. 30, 1894.

**6. Income How Distributed**—The amount of school fund income and mill tax in the hands of the State treasurer on the first day of June, is annually certified to the State superintendent. The State superintendent then distributes the money among the several towns and cities of the State, for the support of common schools therein, in just proportion to the number of children of school age resident therein (119). In order to share in this money each town and city must raise by local taxation annually, a sum equal to its share of the State school moneys, and each school district must maintain a school for at least six months (118, 119 and Sec. 554, An. Stat.).

**7. Local Taxation for Schools**—The principal school tax is raised in each district by local taxation.

**8. Township Library Law**—By recent legislation the town treasurer of each town is required to withhold annually from the State school moneys in his hands, the sum of ten cents for each child of school age in his town. The town clerk, then, with the advice of the county superintendent, expends the money thus withheld in purchasing books for a township library, from a printed list prepared by the State superintendent. The books are then distributed among the several school districts of the town. From time to time they are collected and re-distributed. The township library law, as it is called, is working admirably. It is hoped that soon the very best literature will be accessible to every child in the State. By this act the legislature has used, for the first time, its constitutional authority to apply a part of the income of the school fund for the support of school libraries (116).

**9. Academies and Normal Schools not Supported by this Income**—No part of the income is used for the support of academies or normal schools.

#### NORMAL SCHOOL FUND

**10. Origin of Fund**—By Act of Congress approved Sept. 28, 1850, the United States granted to the State all swamp and overflowed public lands within its boundaries. The State has divided the proceeds of the sales of these lands equally into two funds, called the drainage fund and the normal school fund. The drainage fund is expended in draining and reclaiming the swamp lands and in constructing roads and bridges over them.



**11. Normal School Fund.**—The normal school fund is not expended. On Sept. 30, 1894, it amounted to \$1,827,447.46, with 211,911.91, acres of land unsold. Like the school fund, it is kept invested by the school-land commissioners, and the interest is available for the support of the normal schools under the administration of the Board of Regents (p.147). The legislature of 1895 made a permanent annual appropriation of a tax of one-fifth of a mill on each dollar of taxable property in the State. The total income for the year ending Sept. 30, 1894, was \$162,131.08.

#### UNIVERSITY FUND

**12. Origin of Fund.**—The University of Wisconsin is provided for in the constitution. The proceeds of all lands granted to the State by the United States for University purposes form a perpetual fund known as the "University Fund" (120).

**13. State Tax.**—By chap. 300, laws of 1883, an annual State tax of one-eighth of one mill on the dollar, is provided for, and by chap. 241 laws of 1895 a similar additional tax of one-tenth of a mill is levied.

**14. Amount of Fund.**—On Sept. 30, 1894, the fund amounted to \$230,663, with 937.4 acres of land unsold.

**15. Amount of Income.**—The income of the fund, including the proceeds of the permanent State tax, and some large special appropriations for building purposes and the purchase of real estate, amounted to \$470,073.72 for the year ending Sept. 30, 1894.

#### AGRICULTURAL COLLEGE FUND

**16. Origin.**—By Act of Congress approved July 2, 1862, two hundred and forty thousand acres of land were granted by the United States, to the State, for the pur-



pose of supporting an institution of learning, "where shall be taught the principles of agriculture and mechanic arts." The University of Wisconsin undertook the trust of maintaining such a school, and the College of Agriculture is now one of the colleges of the University.

**17. Amount of Fund**—Sept. 30, 1894, this fund amounted to \$302,355.72 with 243.07 acres of land unsold.

**18. Amount of Income**—The income for the year ending on that date was \$27,828.96.

## CHAPTER XV. EDUCATION.

**1. District Schools**—The Constitution directs the legislature to provide by law for the establishment of district schools. These schools must be free to all children between the ages of four and twenty, and no sectarian instruction shall be allowed therein (117).

**2. District System**—There are about a thousand organized towns in the State. These towns have been divided into school districts, and the people of each district control their own school subject to the general laws of the State. Annually, on the first Monday of July, the people of the district meet to elect officers and legislate in school matters for the coming year. Women as well as men are allowed to vote.

**3. District Board**—The district board consists of three members, director, treasurer and clerk, elected for three years, one member going out of office each year. The board engages legally qualified teachers, selects textbooks, makes rules and regulations for the government

of the school, and has general control of the school, and the district property.

**4. Branches Taught in the Schools**—The branches that must be taught are prescribed by law—reading, orthoepy, writing, spelling, grammar, arithmetic, geography, Constitution of the United States, Constitution of the State, and physiology and hygiene with reference to the effects of stimulants and narcotics on the human system. Such other branches may be added as the school board may determine.

**5. Township System**—Any town may adopt the township system, that is, the system in which all the schools of the town are under one town board. A few towns are so organized for school purposes. There is a good deal of public sentiment in favor of making this permissive law compulsory and the legislature of 1895 has taken steps to secure information as to the advisability of effecting that end.

#### GRADED SCHOOLS AND HIGH SCHOOLS

**6. Two Classes of Free High Schools**—In the cities and villages there are systems of graded schools, and free high schools. The free high schools, however, are of two classes: first, those in country places, where there are no graded schools, and second, those in larger places where there are graded schools.

**7. State Allowance**—The State makes an annual appropriation of \$25,000 for the support of each of these classes of schools.

**8. How Controlled**—The law passed to encourage the organization of free high schools in country places has proved an almost total failure. Those in connection with graded schools are very flourishing and in high

popular favor. They are controlled, usually, by boards of education and city superintendents.

**9. High School Inspector**—These schools are under the official inspection of a state officer, called the Inspector of Free High Schools. The inspector is appointed by the State superintendent and is really one of his assistants.

**10. Courses of Study**—The courses of study must be approved by the State superintendent. In most of the schools the courses are four years long.

**11. Principals and Assistants**—Principals of free high schools having four-year courses, must hold the unlimited state certificate, or some equivalent qualification. Assistants must have their certificates approved by the State superintendent.

**12. Accredited Schools**—The University of Wisconsin and the State Normal Schools have regulations, under which high school graduates may be permitted to enter these higher institutions without entrance examinations. No schools are accredited, until it has been shown to the satisfaction of the university or normal school authorities, that they are doing thorough work.

**13. Privileges of Graduates**—Free high school diplomas from four-year courses may be countersigned by the county superintendent after the holder has taught in the public schools, successfully, on a first grade County certificate for one year. This counter-signature makes the diploma a first-grade certificate.

**14. Other High Schools**—There are a few high schools in the largest places,—Milwaukee, La Crosse, Superior, and a few others,—that do not participate in the State aid and are not under the supervision of the State inspector.

## NORMAL SCHOOLS

**15. Special Function**—The Normal Schools have already been mentioned. Their special function is to fit young men and women for the work of teaching in the public schools of the State.

**16. Two Courses : Elementary Course**—They have two courses,—1st an elementary course of two and a half years. Those who complete this course receive a certificate, qualifying them to teach in the public schools of the State for one year. After one year's successful teaching, the certificate may be countersigned by the state superintendent. This countersignature makes the certificate a State certificate for five years. The school at Milwaukee does not have this course.

**17. Advanced Course**—2d. An advanced course of two additional years. Those completing this course receive a diploma, qualifying them to teach in the public schools of the State for one year. After one year's successful teaching the diploma may be countersigned by the State superintendent with the effect of making it a State certificate for life.

**18. Prosperity of these Schools**—These schools are all in very flourishing condition. The number of persons graduating is yearly increasing, and the services of the graduates are in great demand in the public-school service.

**19. Institute Conductors**—At each of these schools there is one teacher known as the institute conductor, whose business it is to hold institutes, for the instruction of teachers, under the direction of the Board of Regents of Normal Schools. Besides these conductors, many other persons are annually employed in this service. The amount spent is about \$8000 annually.

## UNIVERSITY OF WISCONSIN

**20. Growth : Location : Buildings : Equipments**—The University of Wisconsin has been growing very rapidly. It is beautifully located on the banks of Lake Mendota, in the city of Madison. It has fine, commodious modern buildings well adapted to its purposes. It is unusually well supplied with libraries, gymnasiums, laboratories, and museums.

**21. Faculty**—It has about a hundred professors, and instructors, and over fifteen hundred students.

**22. Organization**—It is organized into :—

a. The College of Letters and Science.

b. The College of Mechanics and Engineering.

c. The College of Agriculture.

d. The College of Law.

e. The School of Pharmacy.

f. The School of Economics, Political Science and History.

g. The Summer School.

h. The School of Music.

i. The University Extension Department.

**23. Original Research**—Two departments are devoted almost exclusively to original research, the Washburn Observatory, and the Agricultural Station. A great amount of original work is done in other departments.

**24. Institute Lectures**—One of the professors—the professor of pedagogy—is employed during the teachers' institute season, in lecturing at these gatherings.

**25. University Extension**—The University Extension Department brings many of the benefits of the University to the people of the State.

**26. Farmers' Institutes**—Under the charge of the Uni-

versity, there is a very flourishing system of farmers' institutes. The work is under the direction of a superintendent. He is aided by conductors specialists in the various branches of farming.

#### INSTITUTIONS NOT UNDER STATE CONTROL

**27. Private Institutions**—Besides the State institutions there are many others in the State, supported mostly by the various churches, Beloit College, Ripon College, Milton College, and Lawrence University, St. Clara's Academy, German-English Academy, Milwaukee Academy and Downer College, Wayland Academy, Northwestern University and many other institutions that might be mentioned, are doing good work for the youth of the State, and well deserve the high reputation they enjoy.



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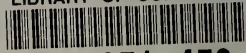








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